

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

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COMMONWEALTH OF MASSACHUSETTS,

v.

KAREN READ.

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* Docket No. 2282CR00117

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BEFORE THE HONORABLE BEVERLY CANNONE
FRIDAY, JUNE 14, 2024
TESTIMONY OF JOSEPH PAUL

APPEARANCES:

For the Commonwealth:

BY: ADAM LALLY, A.D.A.
LAURA MCLAUGHLIN, A.D.A.

For the defendant:

BY: DAVID YANNETTI, ESQ.
ALAN JACKSON, ESQ.
ELIZABETH LITTLE, ESQ.

Dedham, Massachusetts
Room 25

Christine D. Blankenship, CVR
Court Reporter/Transcriber

I N D E X

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1 (Court in session.)

2 (Defendant is present with counsel.)

3 (Jury in.)

4 (Testimony of Joseph Paul begins.)

5 MR. LALLY: Commonwealth would call Trooper Joseph
6 Paul to the stand.

7 JOSEPH PAUL, sworn

8 THE WITNESS: Good morning.

9 THE COURT: Good afternoon or good morning.

10 THE WITNESS: I guess good afternoon.

11 THE COURT: All right. Mr. Lally, whenever you're
12 ready.

13 MR. LALLY: Thank you, Your Honor.

14 **DIRECT EXAMINATION**

15 **BY MR. LALLY:**

16 Q Good afternoon, sir.

17 A Good afternoon.

18 Q Could you please state your name and spell your
19 last name for the jury?

20 A Trooper Joe Paul, that's P-A-U-L.

21 Q And how are you employed, sir?

22 A I am currently employed with the Massachusetts
23 State Police.

24 Q And how long have you been a trooper with the
25 state police?

1 A I have been a trooper for approximately eight and
2 a half years.

3 Q And --

4 A Sorry. Twelve and a half years. My apologies.

5 Q And where is it that you're currently assigned
6 within the state police?

7 A I am currently assigned to our collision analysis
8 and reconstruction section, otherwise known as cars or
9 recon.

10 Q And how long have you had that assignment with the
11 reconstruction of cars?

12 A That was for about eight and a half years.

13 Q And with respect to your assignment to that unit
14 prior to beginning with that unit -- let me ask you
15 this first. As far as the cars unit is concerned, how
16 is that sort of divided up as far as -- is it sort of
17 regions that you would specifically cover?

18 A Correct. We have four separate -- four separate
19 regions across the states. We have southeast and
20 northeast, central, and the western.

21 Q And which of those are you assigned?

22 A I am assigned to the southeast.

23 Q And geographically, how much territory are we
24 talking about that the southeast covers?

25 A Anywhere from Boston, down to the Cape, Martha's

1 Vineyard, Nantucket, anywhere southeastern part of
2 Massachusetts.

3 Q And currently, how many troopers are assigned to
4 this specialized reconstruction unit within your
5 southeast region.

6 A Within our southeast region, I believe we have
7 nine now.

8 Q And is there some kind of on-call system that your
9 unit operates by?

10 A Yes.

11 Q Can you describe that for jury?

12 A So we rotate -- so we rotate every day. Our on-
13 calls are for 24 hours from 0700 to 0700, the next day.

14 Q Now, with respect to yourself upon -- well, prior
15 to you entering into the cars unit, what, if any,
16 specialized training do you undergo in regard to crash
17 reconstruction?

18 A So when I went through -- before I got into the
19 unit, I was sent to three separate classes. Each class
20 was 40 hours long. So the first class is basic at scene
21 crash investigation. Next one is advanced crash
22 investigation, and the other one is traffic crash
23 reconstruction.

24 Q And with each of these trainings that you
25 underwent prior to being assigned to the cars unit and

1 some more that we'll talk about in a moment, with
2 respect to each of the trainings that you've been a
3 part of or undergone, is there some sort of
4 certification that you receive in regards to a
5 successful completion of those trainings?

6 A Yes, each one has its own certification.

7 Q Now, with respect to since you've been working
8 with the cars unit over the last several years, what,
9 if any, additional specialized training have you
10 received in the area of crash construction?

11 A Since I've been on, I've been into probably about
12 877 hours of education in the units. That's anything
13 from bicycle crash investigation, human factors. I'm
14 been currently certified through ACTAR for examiner and
15 the technician. I am a CDR analyst and CR technician
16 trainer. Just recently I attended -- I've attended
17 multiple seminars, and mostly recently I attended a
18 seminar in Houston on EDR data retrieval.

19 Q Now, among those other trainings that you
20 received, do some of those trainings pertain
21 specifically to pedestrian crashes?

22 A Correct.

23 Q And in addition to the training that you received
24 through the state police, what, if any, professional
25 organizations have you belonged to in regard to crash

1 reconstruction?

2 A Yes. I am currently I'm part of NAPARS, which is
3 the National Accident Professional Accident
4 Reconstruction Section. And I'm also certified through
5 ACTAR, which is the Accreditation Commission for
6 Traffic Accident Reconstruction.

7 Q Now, if I can focus specifically just for one on
8 the ACTAR certification, can you explain to the jury
9 sort of what goes into that, and as far as that
10 certification is concerned, what is -- how does one
11 obtain it?

12 A Okay. So first thing you do is you got to submit
13 an application to ACTAR to be allowed to take the test.
14 And part of the -- you know, you have to tell them that
15 how much education you've had, how many crashes you're
16 investigated, basically anything within the crash
17 investigation world, and then once they find that
18 you're accepted into the thing, sent to take the test,
19 then you got to set up a time for the test. We did it
20 as a section throughout our states, and the test is a
21 two part test. It's a practical and theory portion of
22 the test. Each part is four hours long, and you got to
23 pass both portions to be certified through ACTAR.

24 Q So there's a written exam and a practical portion
25 of the test as well?

1 A Correct.

2 Q And can you explain to the jury sort of the
3 practical portion, what does that consist of?

4 A The practical portion is you basically have to
5 make -- analyze the collision. So they give you a
6 simulated crash, and you have to go through and
7 document the evidence. You have to answer a series of
8 questions based on that specific crash. So there where
9 you find the speeds and distances, times, and
10 everything else related to that collision.

11 Q And you've successfully completed and received
12 that certification, sir, is that correct?

13 A That is correct.

14 Q And how long ago was it that you first received
15 your ACTAR certification?

16 A In 2019.

17 Q And how long is that cert -- is that sort of in
18 perpetuity, or is there a sort of a continuing
19 educational component attached to it?

20 A There is a continuation component attached to it.
21 The test is -- you get it's -- we're certified for five
22 years.

23 And within those five years, you still have to maintain
24 a certain amount of education to reapply for ACTAR
25 again.

1 Q And with respect to that ACTAR examination, are
2 you familiar with sort of the success rate or the
3 passing rates when it to that examination?

4 A Correct?

5 Q And what is it, sir?

6 A It's fairly low? I can tell you within my unit at
7 the time I took it, there were probably twenty --
8 twenty-seven of us that took it and only three of us
9 passed at the time. Yeah, it's not a very high pass
10 rate.

11 Q Now over the course -- let me ask you this. When
12 you first sort of enter into the cars units, are you --
13 you just sort of you go through the training and then
14 you are on call and get sent out on the road by
15 yourself, or how does that work?

16 A No. You first get initially assigned to a field
17 training officer. And then at that point, we shadow the
18 field training officer to various crashes?

19 Q And is there any sort of set time period for how
20 long that shadowing process goes on for?

21 A It's not really a set time. It's more based on --
22 on experience and how many crashes you go to and how
23 much experience you have in the field. And then they
24 basically -- well, if they feel like if you're deemed
25 qualified -- qualified, then they'll send you on the

1 road on your own.

2 Q And over the course of your years within the cars
3 or reconstruction unit, approximately how many crashes
4 have you responded to and investigated?

5 A As of now, I've been to approximately 196 crashes,
6 and I've probably assisted them about 100, 150 crashes.

7 Q And of those -- of all those crashes that you've
8 responded to, investigated, if you know, percentage-
9 wise or number-wise, approximately how many of those
10 have been crashes involving pedestrians?

11 A I know I've probably been -- I've been to
12 approximately 55 pedestrian crashes, and I've assisted
13 others on managing crashes also. So I mean 55 out of
14 196.

15 Q Now, with respect -- if I could turn your
16 attention to by January 29th of 2022. Do you recall
17 that day?

18 A I do.

19 Q And at some points over the course of that date,
20 were you contacted by somebody in regard to a
21 pedestrian collision that turn -- occurred -- excuse me
22 -- in the town of Canton?

23 A I was.

24 Q And do you recall who it was that first reached
25 out, or how did you first become aware of it?

1 A My sergeant, Sergeant Brian Mahoney, was the one
2 who called me at the time.

3 Q And initially, as far as your involvement was
4 concerned, what was your understanding as to the
5 initial request for your involvement?

6 A My initial request was to image the airbag control
7 module, do an inspection, test the vehicle, and map the
8 scene out.

9 Q Now, you've used that term a couple of times, and
10 if I could just ask you to explain it a bit for the
11 jury. When you say an airbag control module or an ACM,
12 what is that, and what do you understand -- understand
13 that term to mean in context of crash reconstruction?

14 A The ACM is the module in a car that shows the
15 airbags and a seatbelt tensioners.

16 Q And what you were referencing before as far as
17 being a CDR -- having taken CDR trainings and being a
18 CDR instructor, what, if any, relationship does the CDR
19 have to --

20 A CDR is just the crash -- crash data retrieval
21 software. It's the software that we use to image or
22 download an airbag control module.

23 Q And can you explain to the jury sort of the
24 process of physically sort of how that's done as far as
25 what are you doing to the vehicle in order to download

1 that information?

2 A Yes, there are two ways really to download a
3 vehicle. It's either one is direct the module or just
4 direct to the vehicle through the DLC port or the
5 diagnostic link connector. The director module, we
6 don't use the director module if a vehicle had no
7 power, then we would have to go directly find the
8 module inside the vehicle and go right to that specific
9 module. But if the car has power, we would go direct to
10 the DLC port, which is the same port that you see when
11 you're like a technician would do the diagnostics on a
12 car, they would plug underneath the steering wheel, and
13 then we'll get there, extract the information from
14 there.

15 Q Once that information is extracted, have you --
16 what, if any, training have you received in regards to
17 reading or interpreting the data that's extracted from
18 it?

19 A Yes, I've been certified through -- as a CDR
20 analyst, and I've taken two classes on it now.

21 Q Now, sir, turning your attention to February 1,
22 2022, on that date, where, if anywhere, did you go in
23 relation to your investigation in this case?

24 A I went to the Canton Police Department.

25 Q Now at some point prior to that, were you made

1 aware or did you do any research into sort of what the
2 weather was like around the time -- what was reported
3 to you initially as around the time the crash occurred?

4 A I know it was snowing and it turned to a blizzard
5 at the time.

6 Q Now initially on February 1, 2022, where did you
7 go?

8 A On February -- Canton Police Department.

9 Q Now, sir, at some point in time on that day, did
10 you also have occasion to go to the residence for a
11 street called Fairview Road in the town of Canton?

12 A I did.

13 Q And specifically, there was an address that you
14 were directed to; is that correct?

15 A That is correct.

16 Q And who, if anyone, did you go there with?

17 A I believe it was one of the Canton police
18 officers. It was Lieutenant Paul Gallagher I think his
19 name was. I met him there.

20 Q And without anything specific as to what was told
21 to you by Lieutenant Gallagher, what was sort of the
22 purpose of having Lieutenant Gallagher there with you
23 at that time?

24 A He was going to show me where basically the
25 evidence they I've had at that point was.

1 Q Now in addition to that, were you also able to --
2 you're familiar with another specialized unit within
3 the state police called the SERT team?

4 A I am.

5 Q And at some points, did you have access to certain
6 diagrams created by Lieutenant O'Hara within the SERT
7 unit?

8 A Yes, I was.

9 MR. LALLY: May I approach the witness, Your
10 Honor?

11 THE COURT: Yes.

12 Q I'm going to show you what's been marked as
13 Exhibit 135 and 136. I'd ask you to review that and
14 look up when you're finished.

15 A (Witness complies.)

16 Q I'm sorry, Mr. Jackson.

17 MR. JACKSON: That's okay.

18 Q Do you recognize those, sir?

19 A I do.

20 MR. LALLY: And, Your Honor, with the Court's
21 permission, if I could just publish that briefly for
22 the jury.

23 THE COURT: Okay.

24 MR. LALLY: Ms. Gilman, if I could actually have
25 Exhibit 136.

1 Q Trooper Paul, do you recognize what's up on the
2 screen as Exhibit 136?

3 A I do.

4 Q And is this the diagram that you were able to view
5 from the -- created by Lieutenant O'Hara from the SERT
6 team?

7 A Yes, I was.

8 Q And what's contained, at least with this overhead
9 shot, is that a fair and accurate portrayal of the
10 roadway or the conditions of the roadway absent
11 obviously weather at the time that you went out there
12 on February 1?

13 A Correct.

14 MR. LALLY: Ms. Gilman, you can take that down.
15 Thank you.

16 Excuse me, Your Honor. If I could have one second.

17 THE COURT: Sure.

18 MR. LALLY: May I approach the witness, Your
19 Honor?

20 THE COURT: Yes.

21 Q I'm going to retrieve that from you and I've put
22 two other photographs before you. I'd ask if you look
23 those over and look up when you're finished.

24 A (Witness complies.)

25 Q And do you recognize those, sir?

1 A I do.

2 Q What do you recognize those to be?

3 A They are pictures that are in my report. They're
4 dual
5 images of the roadway.

6 Q And one facing from the northbound direction, one
7 facing from the southbound; is that correct?

8 A That's correct.

9 MR. LALLY: Your Honor, may I approach?

10 THE COURT: Yes.

11 MR. LALLY: Commonwealth would submit as the
12 exhibit.

13 MR. JACKSON: No objection.

14 THE COURT: Okay.

15 (Whereupon Exhibit No. 582, Photograph, was marked as
16 an exhibit.)

17 (Whereupon Exhibit No. 583, Photograph, was marked as
18 an exhibit.)

19 MR. LALLY: And, Your Honor, with the Court's
20 permission, if I could just publish these first to the
21 witness and then publish them briefly to the jury?

22 THE COURT: Yes.

23 Q Trooper, directing your attention to the screen,
24 what you have before you, is that -- what's up on the
25 screen, excuse me, is that what you have for you now

1 marked as Exhibit 582?

2 A Yes, it is.

3 Q And if you could, there should be a laser pointer
4 on the desk somewhere before you, sir. If you could,
5 using that laser pointer direct the jury's attention to
6 sort of what we're looking at in this particular
7 photograph.

8 A All right. So this is Fairview Road, it's facing
9 northbound. 34 Fairview Road will be on to the left in
10 this area.

11 Q Now with regard to the roadway, when you went
12 there, what, if any, observations or what, if anything,
13 did you note about sort of the roadway surface or
14 markings on the roadway or the general overall
15 condition of the roadway?

16 A The roadway was -- yeah, there was no -- no
17 significant difference -- significant -- anything
18 significant with the roadway.

19 Q As far as the roadway material, were you able to
20 observe whether it was asphalt or concrete or anything
21 else?

22 A Right. Yes, it was an asphalt roadway.

23 Q And as far as the markings within the roadway,
24 what, if any, observations did you make of?

25 A There was double yellow line, white fog lines,

1 both sides of edge of the road that were going after
2 the roadway.

3 Q And then as far as adjacent to the roadway or
4 adjacent to the fog line, what, if anything, did you
5 observe there?

6 A So on to -- as you look at the picture, the left
7 side has asphalt curbs. These are about five inches
8 tall. Same on both sides. And there's a sidewalk
9 along the right side of the roadway here.

10 Q And the side of the asphalt curbs, that's the
11 same side of 34 Fairview was located on; is that
12 correct?

13 A Correct.

14 MR. LALLY: Ms. Gilman, if I could have the next
15 slide.

16 Q And, Trooper Paul, if I could direct your
17 attention to the next exhibit before, I think it's 583.
18 And, again, sir, what's up on the screen, is that what
19 you have before you as 583?

20 A Yes, it is.

21 Q And if you could again using the laser pointer,
22 just briefly direct the jury's attention to what, if
23 anything, you note as far as from this perspective?

24 A Yeah, so this is the southbound. 34 Fairview
25 would be on the right side here.

1 MR. LALLY: Ms. Gilman, you can take that down.
2 May I approach just to retrieve, Your Honor?

3 THE COURT: Yes.

4 Q Now, Trooper, with regard to -- with regard to the
5 roadway as far as Fairview Road, what, if anything, did
6 you note in regard to postings regarding the speed
7 limit on that particular roadway?

8 A Yes, the posting for a speed limit is 30 miles per
9 hour. At this area, it's only posted 30 miles per hour
10 for northbound operators, and I believe it was, like,
11 19 Fairview Road it was posted in front of. For the
12 southbound operators, it was not posted.

13 Q And so for a northbound operator, that would again
14 be someone where the residence of 34 Fairview Road
15 would be on the left-hand side of the road; is that
16 correct?

17 A That's correct.

18 Q And with regard to the width of the lanes or what,
19 if any, measurements did you take in regard to the
20 lanes or the roadway itself?

21 A Yeah, each travel lane was approximately 12 feet,
22 and the overall width was approximately 27 feet.

23 Q Now, as far as measurements being conducted with
24 regard to the scene, what, if anything, did you use to
25 or employ to make those measurements or what, if any,

1 devices?

2 A Yes, we -- I mapped the scene with a -- it's
3 called a Leica GNS -- GNSS GPS(ph) total station and
4 also used a drone.

5 Q That's a UAS; is that correct?

6 A Correct. The drone I mean?

7 A Yes.

8 Q And with regard to each of those, as far as the
9 GPS mapping and the drone, have you received any sort
10 of specialized training in regard to employment of each
11 of those tools?

12 A Yes, I have been certified for the use of Leica.
13 And I've also have a part -- I also have a license for
14 the drone.

15 Q Now, as far as starting with the Leica or the GPS,
16 if you could explain to the jury sort of what that is
17 and how you that device in order to, as you've termed
18 it, maps?

19 A Yes, it's essentially what surveyors would use to
20 make roadways. It uses satellites and GPS data, plus
21 cell phone data to make marks on the roadway or not
22 actual marks, but just mark points in the roadway that
23 are within millimeters of the device.

24 Q And with regard to the drone device or how does
25 that -- can you explain to the jury sort of how that

1 works and how that's used?

2 A Yeah, so the drone, and as we fly a drone around
3 the area. We set it to set up a grid pattern to fly
4 around the scene, and while it flies this grid pattern,
5 it takes a series of photographs, and these photographs
6 are also GPS marked. So we -- and once we get all the
7 photographs in, we fill into a program, and the program
8 will essentially stitch those altogether. And then once
9 we get that picture, we throw it into a diagramming
10 system.

11 Q And that diagramming system, have you also
12 received training in regards to utilization of that
13 diagramming system?

14 A Yes, I have.

15 Q And the one that you're currently using within the
16 cars unit, what is that diagramming system or software
17 called?

18 A It's IMS 360.

19 MR. LALLY: And, Your Honor, may I approach the
20 witness? THE COURT: Yes.

21 Q Sir, I'm showing you four documents. I'd ask you
22 just to review those and look up when you're finished.

23 A (Witness complies.)

24 Q And do you recognize those, sir?

25 A I do.

1 Q And what do you recognize those to be?

2 A These are the diagrams that get -- that we print
3 out through the program.

4 Q And the last one is the drone image; is that
5 correct?

6 A Yes, they're all -- they're all drone images. The
7 last one is just a one that was put into my diagram and
8 I labeled it as a drone image.

9 MR. LALLY: Your Honor, may I approach?

10 THE COURT: Yes.

11 MR. LALLY: Commonwealth is seeking to introduce
12 them as the next four exhibit.

13 MR. JACKSON: No objection, Your Honor.

14 (Whereupon Exhibit No. 584, Photograph, was marked as
15 an exhibit.)

16 (Whereupon Exhibit No. 585, Photograph, was marked as
17 an exhibit.)

18 (Whereupon Exhibit No. 586, Photograph, was marked as
19 an exhibit.)

20 (Whereupon Exhibit No. 587, Photograph, was marked as
21 an exhibit.)

22 Q Yes. That's my fault. Thanks very much.

23 A Sure.

24 Q Now, Trooper Paul, are you familiar with the term
25 -- well, let me ask you this. In regard to the roadway

1 itself, what, if anything else beyond sort of lane
2 width and overall width, what, if any other,
3 measurements did you take there?

4 A So we took measurements for the -- for the
5 evidence.

6 Q Let me ask it this way. As far as with elevation
7 or incline in the roadway, what, if any, measurements
8 did you take in regard to that?

9 A Yeah, so we took a -- we took the elevation and
10 roadway measurements -- or the elevation for the
11 roadway.

12 Q And where in relation to the residence at 34
13 Fairview did you take that? Sort of the entire street
14 or just in the general area of that specific address?

15 A In the general area of that specific address.

16 Q And from your measurements as far as -- well, let
17 me ask you this. How was measurement regarded to
18 elevation or incline, what kind of tool do you use for
19 that?

20 A We have a level -- it's a digital level that we
21 will place on the roadway and we'll get a measurement
22 from that.

23 Q Now, regard to the measurements that you took or
24 the elevation or the incline in the roadway, anything
25 -- or what, if anything, of significance did you find

1 there?

2 A So this roadway had an approximately plus or minus
3 one to two degrees.

4 Q So nothing significant; is that fair to say?

5 A Nothing significant, yes.

6 Q Now, sir, through your training and experience as
7 a crash reconstructionist, are you familiar with the
8 term related to crash reconstruction called roadway
9 evidence?

10 A Yes.

11 Q And can you explain to the jury sort of what your
12 understanding of that term is, and what types of things
13 could be termed as roadway evidence?

14 A That's roadway evidence is anything that's related
15 to the collision you're investigating at the time. It
16 could be anything from vehicle debris, you know, gouge
17 marks, tire marks, anything that's related to a vehicle
18 or whatever type of crash you are investigating. It
19 game could be vehicle or pedestrians.

20 Q Or any sort of -- anything from either the vehicle
21 or pedestrian as well; is that correct?

22 A Correct.

23 Q So pieces from a vehicle --

24 (Audio breaks through.)

25 A Yes.

1 Q Now, with respect to both your review of the SERT
2 team diagrams, as well as speaking with members of the
3 Canton Police Department, were you able to then plot
4 certain pieces of roadway evidence onto those diagrams
5 that you had just -- that I just showed you a few
6 moments ago?

7 A Yes, I was.

8 Q Now with reference to, are you familiar also,
9 through your training and experience when it comes to
10 pedestrian crashes as far as sort of the physics or
11 kinematics of how pedestrians interact with vehicles in
12 the course of a collision?

13 A Yes, I am.

14 Q Now, I'm going to ask you just a couple of
15 terminology questions when it comes to items that are
16 involved in a collision, sort of simple Newtonian
17 physics, Newton's First Law.

18 Can you explain what that is to the jury and sort
19 of how that pertains to any collision between two
20 objects?

21 A The first law?

22 Q Yes.

23 A Yeah, that's the when object stays in motion or
24 stays at rest will stay at motion or rest until acted
25 upon by an outside force.

1 Q Now, with respect to -- are you familiar also with
2 a crash reconstruction term called final rest?

3 A Yes, I am.

4 Q And are there different derivations of final rest
5 as far as controlled final rest versus non-controlled
6 final rest?

7 A Correct.

8 Q And can you explain just first to the jury what
9 final rest means in relation to crash reconstruction,
10 and then what, if any, differences there are between a
11 controlled final rest and an uncontrolled final rest?

12 A Yes, the final rest is what we use for describe
13 the area where a pedestrian came to stop after the
14 collision. Immediately after the collision, this is
15 where they first stopped or a vehicle -- that's a
16 collision, that's where this vehicle first stopped.
17 And a controlled final rest is when an operator
18 actually controls the vehicle to the stop and as
19 opposed to the uncontrolled final rest is when there is
20 no control, it's usually acted upon by outside forces
21 that will control the vehicle or a pedestrian to its
22 final rests.

23 MR. LALLY: And, Your Honor, with the Court's
24 permission if I could publish what's now been marked as
25 Exhibits 584 through 587 for the jury?

1 THE COURT: Yes.

2 MR. LALLY: Ms. Gilman, if I could -- and, Your
3 Honor, may I approach just to return the exhibits to
4 the witness?

5 THE COURT: Yes.

6 MR. LALLY: Ms. Gilman, if I could ask you to zoom
7 just in a little bit on that.

8 Q And now, Trooper, what you have up on the screen
9 is that what you have before you, the first of those
10 exhibits?

11 A Yes, it is.

12 Q Now, using the laser pointer before you if you
13 could, I would ask you to draw the jury's attention or
14 direction to what, if anything, of significance you
15 have noted within this diagram one.

16 A Okay. You want me to use the pointer?

17 Q Yes.

18 A Okay. So in this time, I -- I labeled each part of
19 the evidence. So there here would be the pedestrian's
20 final rests, and they're all, since there's so many put
21 together, everything was labeled with a red arrow that
22 would be point to where the final rest is. And this is
23 where a glass cup was found, and these are the red and
24 clear plastic pieces. That's where they were found and
25 the pedestrian's shoe was found here. The are smaller

1 versions here in the light blue is one is the fire
2 hydrants, the flagpole. This is a label for the street
3 34 -- and I don't see a street name -- Fairview Road
4 here.

5 Q Now, as far as measurements were concerned, what,
6 if anything, were you able to do to measure sort of
7 between different points of roadway evidence or
8 specifically from the pedestrian or Mr. O'Keefe's final
9 rest in reference to other items that you had depicted?

10 A So on these diagrams, like it's hard to see here,
11 but it is a scale diagram. The diagram itself is
12 scale. Once you put a ruler up to the actual paper,
13 it's scale. I also have on here, sorry to see, but
14 there's, I mean, it's right here, they're called ground
15 control points. They're little X's on the roadway.
16 They're used for the drones, imaging, and using the
17 drone -- the drone imagings will use those in order to
18 help put the other pictures back together.

19 At the time of this, I measured between each
20 points from ground control point one to two and put it
21 as approximately fifty feet(sic), and two to three is
22 fifty feet and three to four is fifty feet. So it kind
23 of is a second way to measure off the diagram and also
24 using the program to measure to different points while
25 using the diagram.

1 Q And as far as starting with the shoe that you have
2 depicted in this diagram, what was the measurement of
3 the shoe away from Mr. O'Keefe's body?

4 A I believe the shoe was approximately -- I don't
5 have my thing. It was approximately 10 feet away.

6 MR. LALLY: Your Honor, with the Court's
7 permission, may the trooper refer to this report just
8 for the specific measurements?

9 THE COURT: Yes.

10 A Got it.

11 Q Trooper, with regard to how far away approximately
12 was that from Mr. O'Keefe's body?

13 A Nine feet.

14 Q And you also have a measurement for how far away
15 the glass cut pieces were from Mr. O'Keefe's body?

16 A Yeah, 1 foot.

17 Q And for the red plastic you have labeled on this
18 diagram as. How far away from Mr. O'Keefe body was
19 that?

20 A Seven feet.

21 Q Now, with regard to the directionality of -- you
22 also measured for the directionality as far as the 9
23 feet the shoe was away, which direction was it?

24 A Each point -- each evidence was measured from the
25 pedestrian's final rest. So the shoe was 9 feet

1 southeast from the pedestrian's final rest.

2 Q And if you could, using the laser pointer on the
3 screen, as far as the directionality of -- of if you
4 could first direct the jury's attention to where Mr.
5 O'Keefe's final rest is, and then as far as the
6 directionality of southeast from that.

7 A So right here, pedestrian's final rest. It's more
8 right there. The shoe is right here. So it'd be kind
9 of southeast. I have an arrow pointing north to kind
10 of give an extra.

11 Q And the glass cup, that was 1 foot away. Which
12 direction was that?

13 A It was about one foot north. It was, I mean, it
14 was found, like, within right next to him, so.

15 Q And the red plastic that you have labeled as A,
16 again that was 7 feet, in which direction was that,
17 sir?

18 A That one was east. So it was right here.

19 Q As far as the clear plastic, what was the
20 measurement and what was the directionality for that
21 item, sir?

22 A Ten feet southeast. So about to here.

23 Q And the red plastic that you have labeled on the
24 diagram as B. How far was that and which -- what
25 directionality was that?

1 A That was 12 feet southeast, and that's found right
2 here.

3 Q Sir, if I could direct your attention to the next
4 exhibit before you a diagram.

5 And, sir, do you recognize what's depicted up on
6 the screen?

7 A Yes, I do.

8 Q And if you could, again, using the laser pointer,
9 what, if anything, of significance did you observe in
10 this particular diagram in reference to what -- in
11 reference to the roadway?

12 A It's just essentially the same diagram. It's just
13 a closer up version of it. So you --

14 Q I'm sorry.

15 Q Yeah. So you saw the pedestrian's final rest,
16 glass clup(sic) cup, plastic pieces, the shoe it's also
17 depicted in the diagram.

18 Q And the red arrows that you read indicated,
19 delineated or depicted sort of from where the words are
20 to where the items were, is that present in this
21 diagram as well?

22 A Correct.

23 Q If I could direct your attention to the next
24 exhibit before you, and if I could have diagram three,
25 Ms. Gilman.

1 Again, Trooper, do you recognize what's up on the
2 screen?

3 A I do.

4 Q And if you could just describe for the jury what
5 are we looking at in this diagram?

6 A So this is just a closer up to the -- the
7 evidence. It's a little smaller -- smaller scale.

8 Q And these diagrams are created from photographs
9 you took with the drone over head on that date of
10 February 1, is that correct?

11 A That is correct.

12 Q And if I could direct your attention to the last
13 exhibits within those -- and, again, sir, if you could,
14 do you recognize what's up on the screen?

15 A I do.

16 Q And could you describe for the jury, again using
17 the laser pointer to delineate what, if anything, the
18 drone photograph and diagram analysis?

19 A Yeah, so this is from my report the same diagram.
20 It has the same amount of evidence on here. There's a
21 house. There's a light pole here. These lines here
22 which initially were the edge of the road and the edge
23 of the sidewalk.

24 Q Thank you, sir.

25 MR. LALLY: Ms. Gilman, you can take that down.

1 THE COURT: All right. Mr. Lally, why don't we
2 pause here for the luncheon recess. Trooper Paul,
3 we'll have you back with us this afternoon.

4 THE WITNESS: Thank you.

5 THE COURT: If you'd follow the jurors out.
6 Thanks.

7 THE COURT OFFICER: Court. All rise for the jury.

8 THE COURT: And, jurors, why don't we take 40, 45
9 minutes.

10 I'll see counsel at sidebar.

11 (Jury out.)

12 (Sidebar commences:

13 Court Order: Jurors or Juror Issues
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Court Order: Jurors or Juror Issues

Court Order: Jurors or Juror Issues

end of sidebar.)

(Court in recess.)

(Court in session.)

(Defendant is present with counsel.)

(Jury in.)

THE COURT: Good afternoon, Trooper. All right.
Mr. Lally, whenever you're ready.

THE WITNESS: Thank you, Your Honor.

MR. LALLY: Your Honor, with the Court's
permission, may we have Exhibit 587 back up on the
screen?

THE COURT: Yes.

MR. LALLY: And, Ms. Gilman, that's the drone

1 image.

2 Q Trooper Paul, directing your attention to what's
3 up on the screen. It's now been marked as Exhibit 587.
4 And this is the last set of four diagrams of drone
5 images that I've presented before you before, correct?

6 A Correct.

7 Q Now, with respect to the evidence, specifically
8 pieces of taillight that are depicted within this
9 diagram, did you put every single piece of taillight
10 that was recovered on January 29 in this diagram?

11 A No, I did not.

12 Q It's fair to say you did also not put every piece
13 of taillight there. You were aware of what was
14 recovered over the course of this investigation and
15 depicted in this particular diagram?

16 A That's correct.

17 Q Now, with respect to this particular area of
18 Fairview Road, understanding that you were there in the
19 daytime, correct?

20 A Yes.

21 Q However, when you were there in the daytime, what,
22 if any, note did you take as to sort of overhead
23 lighting or available for available for ambient street
24 lighting in the area?

25 A Yeah, so on the top corner -- I'll try to put it

1 up here -- there's a light pole right there. A red
2 light pole.

3 Q And with relation to where you've marked as far as
4 the final rest position or Mr. O'Keefe, and the other
5 areas of items of evidence that were recovered from the
6 scene, was there any lighting in that particular area?

7 A There wasn't.

8 MR. LALLY: Ms. Gilman, you can take that down.
9 Mr. Officer, if we can have the lights back. Thank you
10 very much.

11 Q Now, turning your attention, sir, back to February
12 1, 2022. At some point, you were at the Canton Police
13 Department, correct?

14 A Yes.

15 Q And where specifically within the Canton Police
16 Department did you go?

17 A To the back in a garage area.

18 Q And within the garage area, what, if anything --
19 what, if anything, did you do in the garage area?

20 A In the garage area is where we imaged the airbag
21 control module.

22 Q And so -- I'm sorry. Is it fair to say the
23 vehicle, the defendant's vehicle, was located in that
24 garage area?

25 A That is correct.

1 Q And you've imaged that vehicle. And what, if
2 anything else, did you do with respect to the -- to
3 that vehicle that day?

4 A At that point, we just kind of analyzed the damage
5 to the vehicle.

6 Q Now, at some points -- at some points, did you
7 perform any sort of mechanical inspection of the
8 vehicle?

9 A Yes.

10 Q And was that that day or at some later day?

11 A It was that day.

12 Q And was that in the garage area itself, or where
13 did you perform the mechanical inspection of the
14 vehicle?

15 A We analyzed a little bit of the steering and the
16 brake pedals. It was sitting in the garage, then we did
17 testing with it on the -- in the driveway next to
18 Canton PD.

19 Q Now, sir, starting with a visual inspection of the
20 vehicle --

21 MR. LALLY: Your Honor, may I approach?

22 THE COURT: Yes.

23 Q Sir, I'm showing you two photographs. I'd ask you
24 to review those. Look up when you're finished.

25 A (Witness complies.)

1 Q Do you recognize those?

2 A I do.

3 Q And what do you recognize those to be?

4 A They are crime scene photos that I've attached to
5 my report.

6 MR. LALLY: Your Honor, the Commonwealth would
7 seek to introduce and admit as the next three exhibits.

8 MR. JACKSON: No objection, Your Honor.

9 THE COURT: Thank you.

10 THE WITNESS: Sorry.

11 THE COURT REPORTER: Thanks.

12 (Whereupon Exhibit No. 588, Photograph, was marked as
13 an exhibit.)

14 (Whereupon Exhibit No. 589, Photograph, was marked as
15 an exhibit.)

16 MR. LALLY: Your Honor, may I return those to the
17 witness?

18 THE COURT: Yes.

19 MR. LALLY: And, Your Honor, with the Court's
20 permission, may I publish those to the jury?

21 THE COURT: Yes.

22 MR. LALLY: Thank you. One moment, Your Honor.

23 THE COURT: Okay.

24 Q And, Trooper Paul, do you recognize what's up on
25 the screen right now?

1 A Yes, I do.

2 Q What do you recognize that to be?

3 A That's one of the crime scene photos that I
4 attached to my report.

5 Q And what's contained in this, is that a fair and
6 accurate portrayal of the sort of front of this vehicle
7 looking at it from the passenger side?

8 A Yes.

9 MR. LALLY: And, Ms. Gilman, if I could have the
10 next photograph, please.

11 Q And, Trooper, do you recognize what's up on the
12 screen now?

13 A Yes, I do.

14 Q What do you recognize that to be?

15 A That's a crime scene photo that I attached to my
16 report with notations that I've made on it.

17 Q And what's contained in this photograph, is that a
18 fair and accurate portrayal of what you observed in the
19 rear passenger side area of the defendant's vehicle in
20 the garage on February 1?

21 A Yes, it is.

22 Q Now, let's step back a little bit here. With
23 regards to what you've noted within this, if you could,
24 using the laser pointer before you just direct the
25 jury's attention to what, if anything, of significance

1 you observed in your inspection of this area of the
2 Lexus.

3 A Okay. So on the left side here, put down there's
4 scratches, and there was a dent there. The broken
5 taillight here was here. There's some scratching --
6 scratches on the bottom right rear bumper here. And
7 there was glass from a cut back on the bumper.

8 Q As far as the glass on the bumper, what, if any,
9 observations did you make of that in relation to the
10 vehicle itself?

11 A Yeah. It appeared to be from a cup as opposed to
12 any glass that came from the vehicle.

13 MR. JACKSON: Objection.

14 THE COURT: So I'll strike the first part of the
15 answer, but the second part will stand.

16 MR. JACKSON: I have no objection to the second
17 part. Thank you.

18 Q Now with regard to the dents that you've
19 delineated within this photograph, did you take any
20 measurements from the ground as to where that was
21 located?

22 A Yes, I did.

23 Q And how far did you measure the dent to be
24 approximately from -- from the ground?

25 A Approximately 48 to 50 inches from the ground.

1 Q And what, if any, measurements did you take as far
2 as from one part of the vehicle to the other as far as
3 where the dents were located?

4 A Yeah. So it was approximately 19 inches from the
5 right side of the vehicle.

6 Q Now, the scratches that you were talking about
7 before, where were they in relation to the dent?

8 A Right above the dents that you see right -- right
9 there. My hand's shaky.

10 Q Now as far as you obviously also made observations
11 of the driver's side taillight as well?

12 A Yes.

13 Q And so from what you observed with the driver's
14 side taillight versus the passenger side taillight,
15 what, if any, observations did you make as far as the
16 color of the pieces that you found missing from the
17 passenger side taillight?

18 A Compared to the left side of taillight?

19 Q Yes.

20 A So on the left side of the taillight, there was
21 red and clear plastic pieces.

22 Q Now the scratch marks along the bumper, did you
23 take any measurements with relation to them?

24 A Yes.

25 Q And specifically, did you take measurements to the

1 ground to where they were located?

2 A Yes.

3 Q What did you measure those?

4 A They were approximately 27 to 28 inches from the
5 ground.

6 Q Thank you, sir.

7 MR. LALLY: Ms. Gilman, you can take that down.

8 Q Now, Trooper Paul, when we talk about a mechanical
9 inspection of a vehicle just first in general terms,
10 what is it that you're doing with respect to the
11 vehicle in order to conduct that mechanical inspection?

12 A So when we do mechanical inspections, we're
13 checking the steering, make sure the steering moves
14 properly, the brake pedals make sure they are firm,
15 make sure the pedal moves back and forth. Just
16 generally, looking at the tires making sure there's no
17 issues with the vehicle.

18 Q And what, if any, observations did you make of the
19 vehicle itself as far as any defects or anything to do
20 with the braking, the tires, or any of the other areas
21 that you inspected?

22 A We didn't observe any mechanical defects with the
23 vehicle.

24 Q Now, with relation to the -- the weight of the
25 vehicle, what, if any, analysis or what, if anything,

1 did you determine as to the weight of the Lexus?

2 A The weight of the Lexus I didn't -- I mean it
3 wasn't an analysis it was just based on the -- I mean,
4 I have the gross vehicle weighing for the vehicle.

5 Q And how much did the vehicle weigh according to
6 gross weight?

7 A I think it was approximately 7,000 pounds.

8 Q Now with respect to the lights of the vehicle and
9 being the taillights and the headlights, what, if
10 anything, did you determine those to be as far as what
11 type of lights were they?

12 A They were LED. Both they were headlights and
13 taillights were both LED.

14 Q And if you could just expound a little as far as
15 LED lights, what -- what, if any, significance does
16 that have you for you or what kind of lights are LED --
17 how bright are LED lights?

18 A LED can -- well, most comparison to what most
19 people think in current taillights where they have the
20 bulbs where they had to filaments. LED is more
21 electronically controlled. They sense, you know,
22 there's a sensor that will light up as opposed to a
23 bulb-type headlight and taillights.

24 Q Now, are you familiar with an organization called
25 NHTSA? A Yes.

1 Q And what does NHTSA stand for?

2 A It's the National Highway Traffic Safety
3 Administration.

4 Q And what, if anything, did you do with regard to
5 respect to NHTSA in respect to this vehicle itself?

6 A You run the vehicle through NHTSA to see if
7 there's any recalls on the vehicle.

8 Q And what, if any, recalls did you discover when
9 you ran this particular vehicle through NHTSA?

10 A There were no recalls.

11 Q And to be specific, we're talking about this
12 specific vehicle as opposed to just Lexuses in general
13 make and model, correct?

14 A Correct. Yeah, we put the VIN in into the system
15 and it will tell you if this vehicle has any recalls to
16 it.

17 Q Now, you indicated on February 1, at some point
18 you did some testing with the vehicle; is that correct?

19 A Correct.

20 Q And where was that testing done and what did it
21 consist of?

22 A It was done in the parking lot of Canton PD on the
23 same day. We did a forward braking test, reverse
24 braking tests, and reverse acceleration tests.

25 Q Now the parking lot of the Canton police station

1 where you did this, what kind of roadway surface was
2 that?

3 A It's an asphalt surface.

4 Q It's similar to the asphalt surface at 34 Fairview
5 Road; is that correct?

6 A Correct.

7 Q And what was the condition of the roadway as far
8 as how dry or wet was the roadway when you conducted
9 these acceleration and braking tests?

10 A It was wet at the time.

11 Q And with respect to your understanding of January
12 29, 2022, with the asphalt surface in front of 34
13 Fairview Road, what was the condition weather-wise as
14 far as that roadway surface at the time of this
15 collision?

16 A At the time of the collision?

17 Q Yes.

18 A My understanding is it was snowy, so the asphalt
19 road had been fairly wet from snow.

20 Q Now, when you conducted these acceleration and
21 braking tests with the defendant's vehicle, what, if
22 anything, did you -- what, if any, tool or what, if
23 any, implement did you use in the course of that test?

24 A I used a device called a -- it's called a V box.
25 It's a Vbox sport. the device is attached to the

1 windshield and it's also attached by an antenna that
2 goes to the roof. And then basically a Vbox -- do you
3 want me to explain what a Vbox is?

4 Q Please.

5 A Okay. So a Vbox is just -- it's an imagined
6 performance for the vehicle. It uses GPS data -- data
7 to measure the speeds and its location, and you use
8 that just to -- it'll give us how fast we were
9 stopping, a drag factor for the roadway for that
10 specific vehicle and type of road, and acceleration
11 factors. So we attach that to the windshield just kind
12 of give me a way to check its acceleration. It's to
13 check its performance.

14 Q And --

15 MR. LALLY: Sorry, Your Honor. Your Honor, one
16 moment, please.

17 THE COURT: Sure.

18 Q The Vbox is attached to that vehicle. So it's what
19 specifically is it -- does it measure?

20 A So, yeah, it's using the GPS data to plot its
21 location, and so it's measuring its speeds and using
22 the speed and the location, putting that together, and
23 once you -- so you use the app on the -- for the V box
24 and it accepts some parameters as, like, you can go, 30
25 miles per hour, 20 miles per hour, 10 miles prior and

1 it will set your vehicle. So when you go to 30 miles
2 per hour, it'll tell you what you're doing at 30, what
3 you're doing at 20, what you're doing at 10, and then
4 it'll know if you're doing braking or acceleration
5 tests and it'll use those numbers that you have to give
6 you, you know, your acceleration factor or braking
7 factor for the vehicle.

8 Q And so the Vbox sports device that you use, and
9 you've received training as it -- as it applies to,
10 like, using that device?

11 A Yes, I did.

12 Q And certification as well?

13 A It's usually just a training on it.

14 Q Now with respect to the Vbox sport as it's
15 attached to that vehicle, that's measuring specifically
16 from that vehicle with those tires on that roadway
17 surface that day, correct?

18 A That is correct.

19 Q Now, with regards to that testing on that day, you
20 did some acceleration or reverse acceleration tests; is
21 that correct?

22 A Correct.

23 Q And how many of those tests did you conduct?

24 A Two.

25 Q And with -- can you describe to the jury sort of

1 how you conducted those tests or what speeds you were
2 or sort of that process of the two reverse
3 accelerations tests that you conducted that day?

4 A So the reverse acceleration test we conducted, we
5 set the parameters up to be 25 miles per hour. So what
6 we did is we tried to come from a stop at zero and then
7 press the accelerators all the way -- about as far as I
8 could press it and try to go back and see how fast I
9 can get to 25 miles per hour and use -- and see what
10 the performance it did at that time.

11 Q And what, if any, kind of data did you see, with
12 the VBox sport using during those two reverse
13 acceleration tests?

14 A It gave me an acceleration factor. It gave me its
15 speeds and times and distances that it was at each
16 location.

17 Q And if you could explain to the jury sort of when
18 you say acceleration factor, what is an acceleration
19 factor?

20 A It's just a number of how fast the vehicle could
21 travel from -- from, you know, an acceleration. And it
22 could be a light acceleration to a medium acceleration
23 to a hard acceleration. They all have a different
24 number that you can use to kind of relate it back to
25 what your -- what the acceleration is for that vehicle.

1 Q And what was the acceleration factor that you were
2 able to obtain with those two reverse accelerations?

3 A I believe this was at 0.317, I believe.

4 Q Now, during the course of those rapid -- I'm sorry
5 -- the reverse acceleration tests that you conducted,
6 on that day what, if anything, do you note -- well, let
7 me ask you this.

8 As far as the operation of the vehicle, who is
9 actually physically operating the vehicle?

10 A I was actually operating the vehicle.

11 Q And what, if any -- what, if anything, did you
12 note during your operation of the vehicle during the
13 reverse acceleration test that you conducted?

14 A We also noted the setup of the accelerator pedal
15 moved freely. There was no binding. There were no
16 interference from any -- anything on the floor.
17 Nothing interfered with the accelerator pedal make --
18 it worked as it -- as it was supposed to.

19 Q And when you're doing this reverse acceleration
20 test, are you going -- how are you -- if at all, are
21 you manipulating the steering wheel at all, or is it a
22 straight line test, or how is the test -- how's the
23 vehicle directing during the test?

24 A So, yeah, so I try to keep it fairly straight.

25 Q And when you accelerated in reverse in a fairly

1 straight fashion with the steering wheel, what, if
2 anything, did you note about that?

3 A They kept the vehicle fairly straight. There was
4 no -- it didn't -- it was fairly easy to keep control
5 of.

6 Q Now in addition to the two reverse acceleration
7 tests, what, if any, testing did you do with regard to
8 a reverse braking?

9 A Yeah, so we conducted two reverse braking tests.

10 Q And again, similar can you describe to the jury,
11 this is also with the Vbox board attached; is that
12 correct?

13 A Correct.

14 Q So you're obtaining data from that as well?

15 A Yes.

16 Q And during the course of the reverse braking test,
17 what, if anything, first as far as data is concerned,
18 how fast were these tests being conducted, what, if
19 anything, was inputted, what, if any, data did you
20 receive from it?

21 A Yeah, so the versus breaking one, we tried to get
22 up to about 30 miles per hour, and then once we got up
23 to that speed, that's when we apply the brakes, try the
24 brakes fairly hard to try to get the vehicle to stop.

25 Q And are you also familiar with the term known as a

1 deceleration factor?

2 A Correct?

3 Q And can you explain to the jury what that means?

4 A It's just essentially the opposite of what an
5 acceleration factor. This is half -- a number for how
6 fast the vehicle would slow down.

7 Q And with regard to the deceleration factor from
8 the two reverse braking tests that you conducted on
9 that dates, what, if any, figure did you receive from
10 the -- from the instrument from the Vbox board?

11 A For the reverse braking?

12 Q Yes.

13 A I believe this one was a -- so it fairly gives you
14 a drag factor number for this vehicle, too, and our
15 deceleration factor was both that were used the same
16 way. This one was a .71.

17 Q Now with regards -- again, you're operating the
18 vehicle during these two reverse braking tests; is that
19 correct?

20 A Yes, I was.

21 Q And what, if anything, did you note in regard to
22 the operation of the vehicle when you were conducting
23 these two reverse braking tests?

24 A The brake pedal was firm. There was no pulsation
25 from the brake.

1 Q Now, in addition, sir, were you able to conduct
2 some forward braking tests?

3 A Yes, I was.

4 Q And similar again, could you describe to the jury
5 as far as how you were operating the vehicle during the
6 forward braking test?

7 A Yes, essentially, the same thing as reverse except
8 I was going forward this time. I got up to 30 miles
9 per hour, and I would just apply the brakes about as
10 far as I could apply them to the stops.

11 Q And again, are you receiving from the instruments
12 some sort of deceleration factor?

13 A Yes, I was.

14 Q And do you recall what that was?

15 A Yeah, it was a .69.

16 Q And during the course of your operation of the
17 vehicle during the forward braking test, again, what,
18 if anything, did you note in regard to the operation of
19 the defendant's vehicle?

20 A Same as before. The brake pedal was firm. There
21 was no pulsation, no issues.

22 Q Now, you talked a little bit about an ACM or an
23 airbag control module, correct?

24 A Correct.

25 Q And you indicated earlier in your testimony that

1 you had downloaded information from that; is that
2 correct?

3 A Yes.

4 Q Now when you download that information, what, if
5 anything, do you get from the vehicle or what, if any
6 -- how are you able to sort of read or interpret that
7 data?

8 A So in the airbag control model, it's equipped with
9 a spot event data recorder an EDR, and in that data
10 from the R we will attach our -- use the BossCDR
11 software and we'll attach to the vehicle and then that
12 software will basically extract the information or
13 image the information that's in the module, and so that
14 -- and that information could range from getting us
15 speeds with those breaking, if there's, you know,
16 steering wheel movements, looking for a change of
17 velocity, that type of -- so it's a lot of, you know,
18 information around the vehicle.

19 MR. LALLY: May I approach, Your Honor?

20 THE COURT: Yes.

21 Q Showing you a document, sir, seven pages in
22 length. I'd ask you to review that and look up when
23 you're finished.

24 A Okay. (Witness complies.)

25 Q Do you recognize that document, sir?

1 A I do.

2 Q What do you recognize that to be?

3 A This is the document that gets printed out through
4 from the airbag control model through the crash data
5 retrieval software.

6 MR. JACKSON: Thank you. May I approach again,
7 Your Honor?

8 THE COURT: Yes.

9 MR. LALLY: Commonwealth would seek to introduce
10 and admit as the next exhibit.

11 MR. JACKSON: No objection.

12 THE COURT REPORTER: Exhibit 590.

13 (Whereupon Exhibit No. 590, Chart, was marked as an
14 exhibit.)

15 Q Now, sir, when it comes to the CDR printouts -- or
16 let me ask you this, when it comes to the airbag
17 control module, who is that designed to protect or to
18 apply to in respect to safety measures with the
19 vehicle?

20 A It applies to the occupants inside the vehicle.

21 Q And this may sound a little -- first when I say
22 it, but essentially, the airbag control module is
23 typically not designed to protect people on the
24 exterior or the outside of the vehicle, correct?

25 A Correct.

1 Q Now, you've been involved in a number of crash
2 investigations involving pedestrians, correct?

3 A Yes.

4 Q And as far as this particular case, what, if any,
5 sort of useful or significant information were you able
6 to interpret or retrieve from the ACM?

7 A In this bit of software, there was no data
8 recovered or no events recovered.

9 Q And when it comes to pedestrian crashes in
10 general, as far as there being no data in this case, is
11 that something that's abnormal?

12 A It is not.

13 Q If you want to explain to the jury sort of why?

14 A So what an airbag control module is doing it's --
15 as it's running, it's constantly monitoring the
16 vehicle. It's looking for a sudden change of velocity,
17 like a collision. So once the hit feels that sudden
18 change of velocity, essentially it will wake up and
19 monitor the vehicle and see if their seatbelt -- people
20 were wearing seatbelt -- their seatbelts on, what's the
21 speed of the vehicle, a number of different things that
22 it could look for, and once -- and all it wants to do
23 is either do I deploy the airbags or do I tighten the
24 seat belts. So most -- motor vehicle crashes with a car
25 on car crash, there will be a higher change of

1 velocity. So that's usually kind of what it's looking
2 for. Pedestrian clash -- crashes are going to --
3 there's not going to be much change of velocity to the
4 vehicle. That means when they both interact with each
5 other, the pedestrian is not going to change that
6 vehicle's velocity in such a quick manner as say two
7 cars which struck each other.

8 Q Now with respect to crash reconstruction in
9 general, are you familiar with a term called delta V?

10 A Yes.

11 Q And can you explain to the jury sort of what that
12 term means as far as what is -- what is a delta V and
13 what does it measure?

14 A So that's kind of what I was saying with the
15 change of velocity. It was a change of velocity. And I
16 mean, like, change velocity, like, it's also be within
17 a certain amount of time. So change the amount of speed
18 within a certain amount of time.

19 Q And with respect to the vehicle as it applies to
20 crashes or collisions involving pedestrians, and I
21 think you've said a little bit about this, but what, if
22 any, impact on the velocity of vehicle would striking a
23 pedestrian typically have?

24 A Very little.

25 Q Now, specifically, when it applies to pedestrian

1 collisions in general, are you familiar with the
2 concept of linear momentum?

3 A Yes.

4 Q And when it -- can you explain to the jury sort of
5 what that is and how it applies with pedestrian crashes
6 in general?

7 A Linear momentum, the momentum is essentially when
8 two objects interact with each other, they -- they come
9 in with -- with momentum, and they leave with momentum,
10 with essentially the same momentum. And linear momentum
11 just means something that's in line with each other.

12 Q Now, as far as we talked a little bit earlier in
13 your testimony about roadway evidence, when it comes to
14 your experience with pedestrian collisions, what, if
15 any, relationship does that linear momentum have in
16 relation to roadway evidence that you would expect to
17 find at a scene of a pedestrian collision?

18 A So when a pedestrian strikes a vehicle, they have
19 -- they will go in the direction where the vehicle was
20 -- was traveling. So the vehicle's traveling one way,
21 the pedestrian strikes, it will go essentially that
22 same way, depending on what part that vehicle strikes.

23 Q Now, as far as other items that the pedestrian may
24 either have in their hand or other items of looser
25 fitting clothing, what, if any, experience do you have

1 as far as observations of those on collision scenes
2 involving pedestrian collisions?

3 A Yeah, so it's not -- it's not uncommon for
4 pedestrians to lose, essentially, any sort of loose
5 clothing. So, you know, shoes, belts, hats, anytime --
6 anything that's not very strapped on very well, will --
7 could leave the body.

8 Q And as far as directionality is concerned when it
9 applies to that linear momentum that you were speaking
10 of before, those sort of loosely held or handheld items
11 or would glasses be included within that as well?

12 A Correct.

13 Q So those types of items as far as directionality
14 is concerned, what, if anything, can you tell the jury
15 about that?

16 A Yeah, so they will go in the same direction the
17 pedestrian travels post-impact. We usually use that as
18 kind of a post-impact path of travel for the pedestrian
19 showing that this is the direction that they would have
20 traveled from where they got struck.

21 Q Now, are you also familiar with the reconstruction
22 terms known as area of impact and point of impact?

23 A Correct.

24 Q And can you explain what those terms mean --
25 excuse me -- in a crash reconstruction context for the

1 jury?

2 A Yeah, so an area of impact is essentially the --
3 it's the area where the crash happened, where these two
4 vehicles or vehicle pedestrians where their initial
5 impact happens. Point of impact is the same thing. It's
6 just more down to like the actual specific points in
7 that specific area. Area can mean a little bit broader
8 in that sense?

9 Q And what are some of the -- is this something that
10 is delineated somewhat at least by roadway evidence?

11 A Correct.

12 Q And if you could describe for the jury sort of
13 what types of roadway evidence that would lead you or
14 any crash reconstructionist to formulate an opinion as
15 to the area of impact?

16 A Yeah, so like I said earlier with a path of
17 travel, so a lot of inclusions(sic) will start -- most
18 we start where the final rest goes, and we follow the
19 debris or the clothing, we're back to where, you know,
20 follow that path back to where it came from. And we
21 know within that area, that's where an area of impact
22 would be.

23 Q Now, with relation to the evidence that was
24 depicted on the diagrams that were up on the screen
25 before us, the exhibits, what, if any, relationship

1 would the taillight pieces and the shoe that were
2 recovered from the street in front of 34 Fairview Road
3 have in relation to that area of impact?

4 A Yeah, so when they were found in alongside the
5 roadway. So I know that they were found -- the area of
6 impact had to have been somewhere within the roadway
7 and probably somewhere at the beginning, just, you
8 know, prior to beginning of the area -- the first point
9 of evidence that we found.

10 Q So somewhere towards the first point of evidence
11 contained within that debris field; is that correct?

12 A Correct.

13 Q Now --

14 MR. LALLY: May I have one moment?

15 THE COURT: Yes.

16 Q Now, sir, are you also familiar with a safety
17 system specifically applicable to Lexus vehicles?

18 A Yes.

19 Q And have you ever seen training in regard to
20 downloading information in regard to that as well?

21 A Yes.

22 Q And what is that safety system, what is that
23 called?

24 A It's called a Toyota Techstream software.

25 Q And so the Toyota Techstream is a software similar

1 to the crash data retrieval or CDR software that you
2 were talking about but just specific to a Lexus?

3 A Yeah, it's between Toyota -- Toyota and Lexus has
4 software. The Techstream, it's similar in the fact
5 that they both record data to the vehicle. Techstream
6 was created by Toyota for their technicians to diagnose
7 vehicles, and use that information to help, you know,
8 any kind of mechanical issues that they would have with
9 the vehicle that they can do when you bring your car to
10 them, they can look at the Techstream and just kind of
11 find out what --- what caused the mechanical issue.

12 Q Now, with respect to the Toyota Techstream data
13 that's available, what kind of data are we talking?

14 A So Techstream, yeah, obviously they diagnose the
15 stuff so they're looking for any engine defaults or
16 anything else, but they also have what's called a
17 vehicle control history.

18 THE COURT: I'm sorry. I missed that. It's called
19 what?

20 THE WITNESS: A vehicle control history.

21 THE COURT: Thank you.

22 A And the vehicle control history is it's basically
23 monitoring people's driving behavior. So it has certain
24 they call it triggers. The triggers that they have
25 listed and when those triggers are met, they will

1 record data related to that trigger.

2 Q And what type of data, in general terms, what type
3 of data is -- are you able to recover through the
4 Toyota Techstream tool from the vehicle control
5 history?

6 A Yeah, so each trigger being recorded it's the same
7 as you've got to get up your speeds, brakes, the
8 accelerator pedal is on, if the steering wheel angles,
9 engine RPMs, all that type -- all the information that
10 you have related to vehicles.

11 Q Now, in addition, is it possible with vehicles
12 that have some vehicles made that are accessible
13 through this Toyota Techstream including Lexus, which I
14 should say -- I'm sorry. So Lexus is manufactured by
15 Toyota, correct?

16 A That's correct.

17 Q So in some vehicles, Toyota or Lexus vehicles, are
18 made by that manufacturer are equipped with camera
19 systems; is that correct?

20 A Correct.

21 Q And, again, in general terms, what, if anything,
22 in relation to the camera system is it possible to
23 collect from the vehicle control?

24 A The camera systems in certain vehicles can record
25 photos, like the grainy black and white photos.

1 Q And were you able to recover any black and white
2 photos or photos of any kind from the defendant's
3 vehicle in this case?

4 A I was not.

5 Q Now with respect to the sort of physical process
6 of the downloading using this Toyota Techstream tool,
7 can you explain to the jury sort of how that's
8 physically done or what you're doing with the vehicle
9 in order to download that information?

10 A The same kind of same process, just different
11 software as we would for the airbag control module. As
12 I said before, we plug into the DLC port, and then up
13 that software program, and we follow the steps, and we
14 extract the information from the vehicle.

15 Q Now, the extraction of the Toyota Techstream data
16 in this particular case, when was that -- when was that
17 accomplished?

18 A For this one, I believe it was February 2, 2023.

19 Q So a year and a day after you had conducted the
20 braking, installation, test, and inspected the vehicle
21 at the Canton Police Department garage?

22 A That's correct.

23 Q And so as far as the timing of that being February
24 2nd of 2023, why was that?

25 A I was at the time of my initial inspection, I

1 didn't really know much about Techstream at that point.
2 So I had -- so over time, I kind of learned about
3 Techstream, and so once I first learned about it and I
4 thought, this is -- is this relevant to our case, and I
5 looked more into and found that it is relevant, so.

6 Q And the Toyota Techstream as far as that
7 applicability or that tool, is that a relatively newer
8 tool than the reconstruction?

9 A It is getting fairly new as loke -- it's getting
10 spread out. It's getting bigger. It first got created
11 on one vehicle in 2014. So it's been slowly trickling
12 into the Toyota and Lexus vehicles over time. But it's
13 definitely gotten bigger within the past couple years.

14 Q Now, with regards to this information, when you
15 were then able to download that information, you
16 received some data; is that correct?

17 A That's correct.

18 Q And you mentioned that it goes or it's measured
19 sort of by triggers; is that correct?

20 A That's correct.

21 Q And from the data that you were able to obtain
22 from this -- from the defendant's vehicle, what type of
23 data were you able to retrieve as it relates to the
24 vehicle control history?

25 A Yeah, so I mean it's had a, like, a page and a

1 half full of triggers that over the vehicle's timespan
2 that it -- that it -- that it captured.

3 Q And with respect to the triggers, how many
4 triggers did it capture?

5 A It's like a page and a half. I don't know exact
6 numbers of how many triggers that -- that was on each
7 page, but, you know, there was, you know, it's at least
8 a good page and a half full of triggers.

9 MR. LALLY: Your Honor, may the trooper refer to
10 his notes in regard to that?

11 THE COURT: Yes.

12 Q Trooper, if I could direct you to I think it's
13 page 9 of your report.

14 A Okay.

15 Q And how many triggers was it, sir?

16 A Do you want me to count them?

17 THE COURT: Does he have to count them, Mr. Lally?

18 MR. LALLY: No, no, I don't think he has to count
19 them.

20 Q Sir, if I could direct you to paragraph 22.

21 A Oh, yeah, so 22 separate triggers. Those are ---
22 so in my report it says 22 separate triggers that
23 occurred on odometer mileage 12665 to 12666.

24 Q And with regard to the mileage that you noted as
25 far as being between miles 12665 and miles 12666,

1 that's 12,665 to 12,666, correct?

2 A Correct.

3 Q And what was the mileage that you observed on the
4 vehicle at inspection?

5 A Twelve thousand six hundred and sixty-five.

6 Q And at the time that you conducted this Toyota
7 Techstream download from the vehicle, what was the
8 mileage at that time?

9 A Twelve thousand six hundred sixty-six.

10 Q And there's also referenced within the vehicle
11 control history data in regard to something called a
12 key cycle; is that correct?

13 A Correct.

14 Q Can you explain to the jury sort of what a key
15 cycle is and what are the different things that could
16 -- that could trigger a key cycle?

17 A A key cycle is essentially so it's the from the
18 ignition cycle. Sorry. So a key cycle is essentially
19 from when the vehicle goes off, is pressed on, it
20 doesn't necessarily need to be running or turned on, it
21 just needs to be turned on and then off again, and
22 that'd be one key cycle.

23 Q Now with relation to your analysis in regard to
24 the vehicle control history, what, if any, role did the
25 key cycle numbers or what -- what kind of role did that

1 play in your analysis?

2 A It shows -- it showed me where -- how far away
3 they were from each other -- the key cycles were.

4 Q And how far away in what term, sir?

5 A So when I turned the vehicle on when I did my
6 testing, it showed me where -- what key cycle was that
7 I was on when I did those testings and then the
8 odometer mileage in relationship to that.

9 MR. LALLY: Your Honor, may I approach?

10 THE COURT: Yes.

11 Q Sir, I'm showing you a document and just ask you
12 to look at that look and look up when you're finished.

13 A (Witness complies.)

14 Q Do you recognize that, sir?

15 A I do.

16 Q And what do you recognize that to be?

17 A That is the table from the vehicle control history
18 from my important.

19 MR. LALLY: And, Your Honor, may I approach?

20 THE COURT: Yes.

21 MR. LALLY: Commonwealth would seek to introduce
22 and admit as the next exhibit.

23 MR. JACKSON: No objection, Your Honor.

24 THE COURT: Okay.

25 THE CLERK: Exhibit 591.

(Whereupon Exhibit No. 591, Chart, was marked as an
exhibit.)

MR. LALLY: Your Honor, may I have a moment and then return it to the witness?

THE COURT: Yes.

MR. LALLY: If I could have the Court's permission
if I could ask to publish this for the jury.

THE COURT: Okay.

Q Trooper Paul, what's up on the screen, is that the exhibit that you have before you?

A Yes, it is.

Q Now, if you could using the laser pointer before you just direct the jury's attention to what we're looking at in this exhibit, and what type of information and where it's located within this exhibit.

A Okay. So the -- this is the vehicle travel history. Every single point here -- this is where the triggers are. It's the release trigger. Odometer mileage is in this label here. These are the elapsed time and key cycles. I have noticed two arrows here. These were when the vehicle was with us, and a lot of this is related to my testing with the vehicle. And these right before that were the triggers that were prior to those testings.

Q Now, from the -- within this table, sir, there are

1 two triggers recorded at odometer mile twelve thousand
2 six twenty-nine?

3 A Yes.

4 Q And what's the key cycle associated with 12,629?

5 A One thousand one hundred and sixty-two.

6 Q Now these triggers that are contained as far as
7 the 12,629, that's prior to the --

8 THE COURT REPORTER: Your Honor, I'm having
9 trouble hearing from back there.

10 THE COURT: Yeah, you have to either come closer
11 or speak up even louder, Mr. Lally.

12 MR. LALLY: I will speak louder, Your Honor.

13 THE COURT: There's no microphone near you. That's
14 the problem for the court reporter.

15 MR. LALLY: My issue is, Your Honor, there's no
16 light over here.

17 THE COURT: All right. So let's turn the light
18 on, and then we can -- you can ask your question, then
19 we'll turn the light right back off, please.

20 MR. LALLY: Thank you, Your Honor. My apologies.

21 Q So that odometer mile as far as two triggering
22 events at 12,629, correct?

23 A Yes.

24 Q And that's occurs prior to the 12,665, 12,666
25 during the course of your braking and acceleration

1 tests, correct?

2 A Correct.

3 Q And the mileage difference between those two, did
4 you do that math?

5 A Yes.

6 Q What was the mileage difference between the two?

7 A Thirty-six.

8 Q And how many key cycles were different between
9 your testing and that odometer reading of 12,629?

10 A Two key cycles.

11 Q Now as far as the -- what, if any, information did
12 you have and where did you get it in relation to the
13 defendant's vehicle's path of travel prior to those
14 odometer readings that you noted when you did record?

15 A Yeah, so, yeah, I got I was -- I was told that
16 where she traveled afterwards prior to that. I was told
17 -- I was noted their locations, and I used those
18 locations to on through Google to get a mileage for
19 them.

20 MR. LALLY: May I approach, Your Honor?

21 THE COURT: Yes.

22 Q Showing you another document, sir, do you
23 recognize that?

24 A I do.

25 Q And what do you recognize that to be?

1 A Those are the Google directions. I put them in a
2 table and put in my report.

3 MR. LALLY: And may I approach, Your Honor?

4 THE COURT: Yes.

5 MR. LALLY: Commonwealth would seek to introduce
6 and admit as the next exhibit.

7 MR. JACKSON: No objection.

8 THE COURT: Thank you.

9 THE CLERK: Exhibit 592.

10 (Whereupon Exhibit No. 592, Chart, was marked as an
11 exhibit.)

12 THE COURT: Thank you.

13 MR. LALLY: May I have one minute, Your Honor?

14 THE COURT: Yes.

15 MR. LALLY: May I return it to the witness, Your
16 Honor?

17 THE COURT: Yes.

18 MR. LALLY: And, Your Honor, with the Court's
19 permission, if I could publish it to the jury.

20 THE COURT: Okay.

21 MR. LALLY: Ms. Gilman, if you could enlarge that
22 maybe just a little more.

23 Q Now, Trooper Paul, do you recognize what's up on
24 the screen as the next exhibit before you?

25 A Yes, I do.

1 Q These are, again, if you could explain to the jury
2 sort of what we're looking at here and how you came to
3 these final scores.

4 A Yes. So when I got the directions, it showed us we
5 got for 34 Fairview Road to 1 Meadows Ave., and when I
6 put that address onto Google, it gave me suggested
7 routes. So I put each suggested route on there and the
8 time it took. So a key -- I did that with every
9 directions from 1 Meadows Ave. to Waterfall, Waterfall
10 to (f) [REDACTED], and (f) [REDACTED] to 1 Meadows
11 Ave., and then 1 Meadows Ave. to 345 Country Hill
12 Drive, North Dighton. So I did that for every single
13 one and find suggested routes, so which is labeled in
14 all these boxes here. And then at the bottom here, I
15 did a total distance, and I did a min and a max
16 distance of -- the minimal was 36.1 and the max
17 distance of 38.8.

18 THE COURT: All right. So I'm going to ask you to
19 take that down for a minute, and I'll see counsel at
20 sidebar, please.

21 (Sidebar commences:

22 THE COURT: I know there was the defendant's
23 address yesterday. Is there any problem with her
24 parents' address being up there?

25 MR. JACKSON: I'm not crazy about it. I didn't

1 notice it. Is it on that -- is it even on the -

2 MR. YANNETTI: It is.

3 THE COURT: It is.

4 MR. JACKSON: I appreciate the Court looking out,
5 but I'm not crazy about it, but it's mentioned about
6 500 times in a year or so. I'm not going to go nuts
7 about it. I was more concerned about, my concern, the
8 Gilbert address, but I would prefer it not be up. But I
9 don't want to make a big deal out of it. But if Ms.
10 Gilman can maybe just scroll up?

11 THE COURT: Do you need it?

12 MR. LALLY: I don't need it on the screen again,
13 and as far as the exhibit itself, we can redact that
14 out.

15 THE COURT: Okay. I know you didn't raise it,
16 but --

17 MR. JACKSON: I'm satisfied.

18 THE COURT: I caught it yesterday before people
19 were taking --

20 MR. JACKSON: And you caught it again, I appreciate
21 it. I'm busy taking notes so I didn't catch it.

22 THE COURT: Yeah, all right. Thank you.

23 MR. LALLY: Thanks.

24 end of sidebar.)

25 Q Now, in addition to those distances there depicted

1 in that exhibit, sir, have you also looked at a mileage
2 or a distance between -- well, I'm sorry. The first up
3 there was far as 34 Fairview Road to 1 Meadows Avenue;
4 is that correct?

5 A That's correct.

6 Q And that gave you sort of three different routes
7 of travel; is that correct?

8 A Yes.

9 Q And the minute of a max was 2.2 to 2.6?

10 A Correct.

11 Q Now, if you were to add that as an additional sort
12 of distance travel to the 36.1, 38.8, that you had
13 calculated, how much of a difference does that make?

14 A Between the two min/maxes?

15 Q Yes.

16 A Only 2.7.

17 Q And as far as your analysis that we're about to
18 discuss, adding in that approximate two points whatever
19 miles, how much of a difference does that make to your
20 analysis and ultimate conclusions in regard to the VCH
21 or vehicle control history data?

22 A As we go on(ph) so the 36 is just within the realm
23 that she could have traveled 36. The odometer mileage
24 is the odometer mileage. So 36 is 36. That's what's on
25 the vehicle. So within the realm of possibilities that

1 the vehicle would have traveled thirty-six miles after
2 the two triggers that were in this vehicle.

3 Q Now, with respect to that minimum and max as far
4 as the 36.1, 38.8, what, if any, relationship did that
5 have to the difference in the odometer readings that
6 you observed between when you conducted a braking test,
7 and when you observed these two triggering events that
8 you were talking about in the earlier model?

9 A That's it. No difference. The odometer mileage is
10 the odometer mileage. It's 36.

11 Q And so I guess what I'm asking you, sir, is the
12 thirty-six miles, was that within the range of the two
13 triggering events that you were just talking about?

14 A Yes, it was.

15 Q Now, as far as within your reporting, your
16 analysis, did you come up with some sort of a label as
17 far as these two different triggering events that you
18 observed?

19 A Yes, I did.

20 Q And that incorporated the mileage; is that
21 correct?

22 A Correct.

23 Q And that was again 12,629; is that correct?

24 A Yes.

25 Q And then as far as any further label that you put

1 on it, how did you label it?

2 A I labeled them as in when they occurred. One is
3 twelve thousand six twenty-nine A and one thousand --
4 the other one is twelve six hundred and twenty-nine B.

5 Q And with respect to the A and B, which one
6 occurred first?

7 A The A occurred first.

8 MR. LALLY: May I approach, Your Honor?

9 Q I'm putting up a document. Ask if you could read
10 that and look up when you're finished.

11 A Okay.

12 Q And do you recognize that?

13 A I do. It's the data chart from the 12,629 miles A
14 chart.

15 MR. LALLY: May I approach again, Your Honor?

16 THE COURT: Yes.

17 MR. LALLY: Commonwealth would seek to introduce
18 and admit as the next exhibit.

19 MR. JACKSON: No objection.

20 THE COURT: Okay.

21 (Whereupon Exhibit No. 593, Chart, was marked as an
22 exhibit.)

23 MR. LALLY: And, again, if I could just have a
24 moment, Your Honor.

25 THE COURT: Yes.

1 MR. LALLY: May I return this to the witness, Your
2 Honor?

3 THE COURT: Yes.

4 MR. LALLY: With the Court's permission --

5 THE COURT: Yes.

6 Q So with the document before you what's now up on
7 the screen, do you recognize that as what's now been
8 marked as the next exhibit?

9 A I do.

10 Q Is -- if you could describe to the jury sort of
11 what these rows indicate as far as what information is
12 there and, if you could, using the laser pointer direct
13 the jury's attention to what, if anything, of
14 significance you observed in this as far as 12,629
15 miles A.

16 A Okay. So each row starting from the top is the
17 vehicle control history time, which is the time that's
18 recorded in the module itself or in the software that
19 gets recorded as each time and it's recorded as
20 seconds. This time is the time from the start of the
21 key cycle. So it starts off at 652.8. And each one is
22 incremented in approximately half second increments up
23 to -- let me show it -- right here where the trigger
24 is. This is what's called where the trigger happened.
25 So right here is where it kind of goes from four point

1 five to four point six, then it goes up to five. Then
2 everything after that is about half second increments
3 to make sure they're recorded ten seconds of time,
4 which is labeled in this one total time of ten seconds.
5 And I'll split time from trigger, just kind of leave it
6 back to here's the trigger right here and this is the
7 time between each one. This is kind of(ph). So and
8 right here, this is the vehicle's speeds. The blue is
9 just labeled because that's the speed. Zeros are
10 labeled with a light blue as zero. So if I could read
11 this. So this starts from -- it shows that the vehicle
12 is traveling at 9.9 miles per hour. It's slowing down
13 to about zero right here, and then stops for -- for
14 that time and then freezes back -- speeds backs up to.
15 It goes up to 6.2 and then slows back down to zero and
16 then back up to 1.7 to 8.7, if I'm reading that right.

17 And next below for us is miles per hour to
18 kilometers. This is the accelerator opening ratio,
19 which is really where this trigger comes from because
20 the treble(ph) -- the trigger is labeled as the
21 accelerator pedal opening angle is medium to higher
22 immediately after shifting to reverse already labeled
23 as R.

24 Q If I could stop you there --

25 A Yep.

1 Q -- just for a second, sir.

2 As far as the accelerator opening -- accelerator
3 pedal opening angle, can you explain to the jury sort
4 of what that term means and what -- how that relates to
5 sort of the operation of the vehicle?

6 A So the accelerator pedal is, you know, the part
7 where everybody puts their foot on and gets the vehicle
8 to go. So the pedal -- so this is what's shown how far
9 the pedal was actually pressed by the operator of the
10 vehicle, and that's gives you a percentage of that. So
11 if it was, you know, all zeros, not pressed, and 100
12 percent it's all the way down. So they labeled the
13 trigger I think 30 percent is medium to higher in this
14 -- in this way Toyota labels it. So and that's where
15 you'll see the trigger is around 31.5 percent. And
16 also shows when you start from the beginning, goes from
17 zero and it increases up to 50 and a half -- 50.5
18 percent. And that's five point seconds. It's only,
19 you know, a little over a second pass the trigger. And
20 so it's 50 percent and then back off and then back onto
21 the accelerator, again up to 34 percent.

22 Q Now, as far as this data is concerned with the VCH
23 data from the Toyota Techstream, what, if any,
24 information are you able to glean as far as
25 directionality, as far as forward, reverse, left,

1 right, things like that from this data?

2 A So on this label right here, it shows the shift
3 position signal. One is forward and two is reverse. So
4 this right here is showing the vehicle was in drive and
5 going forward. And then the view(ph) got shifted into
6 reverse and then back to drive again.

7 Q Now, from your experience or from your training
8 when it comes to interpreting this type of data, do you
9 have any opinion as to sort of what type of maneuver or
10 what type of actions the vehicle was taking during the
11 course of this triggering event?

12 A Yes. This appears the vehicle was slowing down
13 and making a U-turn because the also the other thing
14 into it, it shows steering wheel -- steering signal,
15 and the steering wheel signal shows that she was
16 traveling to left and then right and then back left
17 again, and also, when she's on the brake switch.

18 Q Thank you, sir.

19 MR. LALLY: Ms. Gilman, you can take that down.

20 And, Your Honor, may I approach?

21 THE COURT: Yes.

22 Q Sir, if I could just retrieve the one you have
23 before you.

24 A Absolutely.

25 Q That document that I've just handed now, do you

1 recognize that?

2 A Yes.

3 Q And what do you recognize that to be?

4 A It's the one the twelve thousand -- the data chart
5 from my report for as labeled as twelve thousand six
6 hundred twenty-nine miles B.

7 Q So that's the second triggering event within this
8 same mileage reading on the odometer, same key cycle?

9 A Correct.

10 MR. LALLY: Your Honor, may I approach?

11 THE COURT: Yes.

12 MR. LALLY: Commonwealth is seeking to introduce
13 them as the next exhibit.

14 MR. JACKSON: No objection.

15 (Whereupon Exhibit No. 594, Chart, was marked as an
16 exhibit.)

17 MR. LALLY: If I can have just one moment, Your
18 Honor. May I approach the witness?

19 THE COURT: Yes, and for the sake of taking the
20 best use of our time, if they're in evidence for the
21 rest of this afternoon, both of you can then just ask
22 to -- just go ahead and put them up and not ask for
23 permission.

24 MR. JACKSON: Thank you, Your Honor.

25 MR. LALLY: And, Ms. Gilman, if I could.

1 Q And, Trooper Paul, do you recognize what's up on
2 the screen now?

3 A I do.

4 Q This is the VCH data chart from that same mileage
5 or the second triggering event as far as 12,629 miles
6 B, correct?

7 A Correct.

8 Q And again, this is in the same odometer range as
9 well as the same key cycle as what was just up on the
10 screen as far as 12,629 miles A, correct?

11 A Yes.

12 Q This occurs after A; is that fair to say?

13 A Correct.

14 Q Now similar to before when it comes to this VCH
15 data up on the screen, if you could, using the laser
16 pointer, demonstrate to the jury what, if anything, of
17 significance you note as a result -- with respect to
18 this data.

19 A So for this one, same label as before, just that
20 the visual(ph) history of time is if I see that -- the
21 trigger time was 1,142.2 seconds after key cycle. And
22 this one shows all the same thing, 10 point -- 10
23 seconds of data. It was -- so the vehicle speed on this
24 one shows that she's slowing down and it's 13.7 miles
25 per hour and gets down to zero, then she's down to zero

1 for a while. And then the vehicle's speed increases up
2 to 24.2 miles per hour at its max speed, then it goes
3 down to 23.6. That's the last two labels. An
4 accelerator pedal angle at this point at key trigger is
5 36.5, and increases up to 74.5 percent, and it stays
6 around 74.5 percent, 74, 73.5, and then 74.

7 Q Now that's 74.5 percent as far as the pressure
8 being applied to the accelerator pedal, correct?

9 A Correct.

10 Q And with respect to that seventy-four point five,
11 that's about three quarters down; is that correct?

12 A Yes.

13 Q Now with regard to this data from 12629 miles B,
14 what, if anything, are you able to tell from this data
15 as far as when that occurred in relation to 12629A?

16 A So they occurred about approximately eight
17 minutes. So twelve six nine A occurred eight minutes
18 prior to the other one, and they both occurred within
19 the same -- on the same odometer knowledge.

20 Q Now, with respect to the duration of the data that
21 you were able to obtain from this one, specifically
22 12629 miles B, what kind of duration of data are we
23 looking at in this particular table or chart?

24 A Say that again.

25 Q How long a period of time --

1 A Oh --

2 Q -- does this depict?

3 A So this is a -- from the -- from the start of the
4 key cycle or just hold -- this -- just this -- this
5 one?

6 Q Just this one.

7 A Okay. So this is ten seconds of data. And with
8 respect to that ten seconds of data, as far as the
9 twenty-four point two miles per hour, when does that
10 occur within the ten seconds of data for this
11 particular event?

12 A So twenty-four point two, as I'll point out is
13 right here, it's actually around the, like, nine second
14 mark.

15 Q Now similar to the other charts for A that was up
16 on the screen a moment before, there's -- is there an
17 indication as far as the accelerator pedal opening
18 angle?

19 A Yes.

20 Q And what, if any, significance does that have, or
21 what, if anything, does that indicate to you from this
22 data, also(ph)?

23 A It shows that the accelerator pedal angle went up
24 to 74 and a half percent. So as a -- out of 100
25 percent, it went up to 74 and a half percent.

1 Q Now with respect to directionality for this, what,
2 if any, data is contained within this chart in respect
3 to that?

4 A Yeah, so on the bottom row it shows the steering
5 wheel signal -- steering signal shows slowing down as
6 zero, it's like point five nine, thirteen point five,
7 thirteen point five. It's saying it's 13.50, 4.5. And
8 that's we're taking about steering wheel -- how far did
9 the steering wheel move from left to right. So that's
10 the degrees of a steering wheel angle.

11 Q Now, as far as when the vehicle was shifted sort
12 of from drive or neutral or park or whatever it was, at
13 some point, is there an indication in this data set on
14 this table as far as when the vehicle was placed into
15 reverse?

16 A Yes.

17 Q And how far into this ten second data sets was the
18 vehicle placed into reverse?

19 A At four seconds. It's the -- right here.

20 Q And so am I correct then that there is a five
21 second difference between four seconds when it's placed
22 in reverse, and nine seconds, approximately, when it
23 achieves that twenty-four point two miles per hour?

24 A Correct.

25 Q Now, as far as the 74.5 percent pressure that's

1 placed on the accelerator pedal, when is that recorded
2 in seconds in relation to the 10 second data set on the
3 -- in this table?

4 A Seventy-four point five starts at the eight
5 second.

6 Q Now, as far as this trigger is concerned, I
7 understand from your testimony that the maximum speed
8 is 24.2; is that correct?

9 A Correct.

10 Q And what is the vehicle's speeds recorded at the
11 end of this ten second days.

12 A Twenty-three point six.

13 Q Now as far as the vehicle being in sort of
14 different sets, as far as drive, reverse, things of
15 that nature, what, if anything, did you observe within
16 this data set as far as how it is at the beginning, how
17 it changes at all, what happens with regard to that in
18 the data setting.

19 A So this one shows that the vehicle was in drive.
20 It starts off in drive. It's slowing down to zero, and
21 it goes to zero which neutral then goes down -- then it
22 goes into reverse. So it's going straight and stops,
23 then it's placed in reverse and then goes backward --
24 goes in reverse.

25 Q Now, as far as the reverse is concerned, you

1 indicated there's also some steering angles that are
2 recorded within the data?

3 A Yes.

4 Q And what, if anything, was recorded in this ten
5 seconds of data, specifically, I'm asking from the time
6 that it goes to reverse to the end of the set, the end
7 of the data set, what, if anything, do you observe with
8 reference to the change in steering angle of the
9 steering wheel?

10 A It does not change much. It's only 13. I think
11 the far it goes to the left is that 13.5 percent. So
12 that's only -- I mean, if the steering is the circle,
13 the whole circle is 360 degrees. So 13.5 percent is
14 only -- and it's still fairly straight in a vehicle at
15 13.5 percent.

16 Q So from this data, this vehicle is backing up in
17 the manner of about five seconds or so in a fairly
18 straight line, and it achieves a maximum speed of 24.2
19 miles per hour, correct?

20 A Correct.

21 Q And even at the end of this data set, the vehicle
22 is still traveling approximately 23.6 miles per hour?

23 A Correct.

24 Q Now as far as the small deviations in the steering
25 that you were testifying about, based on your training

1 and experience, what, if anything, would cause that?

2 A The steering wheel is also caused by operator
3 traveling only small amounts by up to here. So it's
4 only just operator steering at those small deviations.

5 MR. LALLY: Your Honor, may I approach?

6 THE COURT: Yes.

7 Q Let me grab that one.

8 A There you go.

9 Q I'll hand you another document. Do you recognize
10 that?

11 A I do.

12 Q What do you recognize that to be?

13 A It's a more of a closer up snippet of that
14 document that I have attached to my report.

15 MR. LALLY: And, Your Honor, may I approach --

16 THE COURT: Yes.

17 MR. LALLY: Sorry.

18 Commonwealth would seek to introduce this as the
19 next exhibit.

20 MR. JACKSON: No objection, Your Honor.

21 THE COURT: You can go ahead and publish it if
22 you're inclined to.

23 MR. LALLY: Okay.

24 (Whereupon Exhibit No. 595, Chart, was marked as an
25 exhibit.)

1 Q Trooper Paul, from what's depicted up on the
2 screen, isn't it -- as this next exhibit, if you could,
3 using the laser pointer, just direct the jury's
4 attention to what, if anything of significance, you
5 observed in this portion of the base?

6 A Yeah, so I circled in my -- in here if they
7 dropped from 24.2 to 23.6. And also the steering wheel
8 one second went from a left at four point five to a
9 right four point five. So a positive to a negative. And
10 also the same thing with the accelerator opening ratio
11 kind of stays consistent with 74 percent.

12 MR. LALLY: May I approach again, Your Honor?

13 THE COURT: Yes.

14 Q I'm showing you another document, sir.

15 A Okay.

16 Q Do you recognize that?

17 A I did.

18 Q What do you recognize that to be?

19 A It's a vehicle control history distance chart I
20 have attached -- I calculated and attached to my
21 report.

22 MR. LALLY: And may I approach again, Your Honor?

23 THE COURT: Yes.

24 MR. LALLY: The Commonwealth would seek to
25 introduce and to admit as the next exhibit.

1 MR. JACKSON: No objection.

2 THE COURT: Okay. So go ahead and publish it if
3 you're inclined.

4 (Whereupon Exhibit No. 596, Chart, was marked as an
5 exhibit.)

6 Q Trooper Paul, do you recognize what's up on the
7 screen that has now been marked as Exhibit 596?

8 A I do.

9 Q And, again, if you could, using the laser pointer
10 -- well, let me ask you this first. As far as this
11 table and this information up on the screen -- I should
12 have asked you this before. What -- how is this table
13 created, and what, if anything, does this illustrate
14 it?

15 A Yeah, so this illustrates from the chart of
16 12,629B. I started from when the vehicle was placed
17 into reverse. And when it immediately goes from zero
18 and travels up to -- travels up to 23.6. Just that's
19 like the last part of that last chart we had.

20 Q And what, if anything, were you able to do as far
21 as distance traveled and how were you able to determine
22 that?

23 A So I used the -- this vehicle's speeds and the
24 time and calculated a distance that the vehicle
25 traveled during -- during this time.

1 Q And as far as the total distance traveled from the
2 zero to the 23.6 at the end, what was the total
3 distance there?

4 A Ninety-seven point thirty-five feet.

5 Q And with respect to the vehicle's maximum speed as
6 far as point 24.2 miles per hour that's recorded within
7 this data set, how much distance had the vehicle
8 traveled prior to achieving that 24.2 miles per hour?

9 A Sixty-two point five one feet.

10 Q Thank you, sir.

11 MR. LALLY: May I approach just to retrieve, Your
12 Honor?

13 THE COURT: Yes.

14 Q Now, Trooper Paul, with regard to based on your
15 training and experience with respect to this type of
16 data and crash reconstruction in general, this
17 particular set of data from -- whose the name again --
18 from 12,629 miles B, what, if any, type of collision is
19 that data sets consistent with and what?

20 A Yeah, there's a point in there where it appears to
21 be consistent with a pedestrian strike.

22 Q And why is it that your interpretation of that
23 data you feel is consistent with a pedestrian strike?

24 A It's the sudden change of speed that 24.2 to 23.6
25 in a half second while the accelerator pedal is still

1 at a consistent at 74 percent. And also, the steering
2 wheel angle goes from -- it goes left at 4.5 degrees
3 and also goes right to 4.5 degrees and then goes back
4 to left after that. So right at that -- right at spot
5 is something that's consistent with a pedestrian
6 strike.

7 Q Now, with respect to Mr. O'Keefe, the pedestrian
8 in this collision, what, if any, data were you able to
9 see or review in relation to your reconstruction
10 analysis in this case?

11 A Say with -- oh.

12 Q As far as Mr. O'Keefe, what, if anything, did you
13 learn about his injuries?

14 A Oh, like what types of injuries he had?

15 Q Yes.

16 A Yeah, they were blunt force injuries. I mean,
17 there was abrasions, lacerations, and blunt force
18 injuries.

19 Q And the injuries that's that you observed or that
20 you were informed about, did you learn this from the
21 medical examiner; is that correct?

22 A Correct.

23 Q And with respect to the injuries Mr. O'Keefe was
24 recorded as having sustained, according to the medical
25 examiner, if any, relationship did those injuries have

1 to you in relation to a pedestrian collision?

2 A Sorry. Say it again.

3 Q As far as the injuries that you were informed by
4 the medical examiner that Mr. O'Keefe had sustained.

5 A Yes.

6 Q What, if any, relationship did those injuries have
7 in relation to a pedestrian collision?

8 A They were consistent with a pedestrian collision.

9 Q And how so?

10 A Due to, I mean, do you want me to break down each
11 injury? Due to the arm, the lacerations of the arm,
12 from the taillights, the dent with the scratches for
13 his hand could be, those are something that would be
14 consistent with this -- in this particular case with
15 striking a Lexus.

16 Q Now, specifically with reference to this case,
17 what, if any, analysis did you conduct with regard to
18 kinematics?

19 A Yes, I did a kinematics analysis in my report.
20 Kinematics deals with the aspect of motion.

21 THE COURT REPORTER: Slow down.

22 Q And I'm sorry, if you could expand upon that just
23 a little bit and explain to the jurors sort of what
24 kinematics analysis is.

25 A So, a kinematics analysis like I said it deals

1 with the aspects of motion, pedestrian crashes get kind
2 of -- get labeled and certain types of how they
3 interact. So in this particular case, I kind of labeled
4 as a -- it's a forward projection crash with a
5 sideswipe. And what I mean by forward projection, it
6 means that when a pedestrian gets struck by a vehicle,
7 well basically they're -- it's a principal of impact
8 forces are above the pedestrian's center of gravity as
9 in this case where you get the higher back of the
10 vehicle. When you get struck by something like that, it
11 projects you forward in the direction of the vehicle.
12 And in this situation where he gets more struck through
13 the side of the vehicle with -- along the taillight
14 area, that it projected him to forward and then to the
15 left due to this -- like more of a sideswipe manner.

16 Q With respect to the -- you mentioned the height of
17 the vehicle. As far as the shape of the back of the
18 vehicle, what, if any, relationship does that have in
19 regard to you sort of labeling this as a forward
20 projection/sideswipe collision?

21 A Yeah, due to it being, you know, pretty flat, it's
22 not the front of vehicle where you had the hood and a
23 pedestrian saying above the hood. It's -- it's the back
24 of the vehicle. It's pretty flat and it's pretty higher
25 up.

1 Q Now with respect, you were also made aware through
2 your review of the medical examiner's report that there
3 was injury to the back of Mr. O'Keefe's head?

4 A Yes.

5 Q And based on your training and experience and in
6 particular through pedestrian collisions, what, if any,
7 significance did that have in relation to your opinion
8 as to how Mr. O'Keefe interacted with the defendant's
9 vehicle?

10 A So, yeah, so when you look at the damage, he would
11 have interacted with that left side of the vehicle.
12 And when he got struck by the vehicle on the left side,
13 it would have caused his vehicle to rotate kind of
14 counter clockwise. And then when that rotation, he
15 could turn into his back and his back could have struck
16 the grounds. I noted at the scene that there was
17 asphalt curbing, which could have -- somewhere he could
18 have struck his head in there or somewhere along any of
19 the pavement would have caused damage. Most forward
20 projection crashes have damage on both sides of the
21 body.

22 Q Why is that?

23 A Due to them get projected forward. So they get hit
24 from behind, they had damage to the back, and then when
25 they get projected forward, they get damage to the

1 front. So, I mean, in this case, he got projected and
2 got spun counterclockwise due to the where he got
3 impacted with the vehicle.

4 Q Now with regard to the vehicle speeds
5 kinematically speaking from your analysis in respect to
6 that, what, if anything, can you say in relation to
7 just in general terms as far as a pedestrian collision
8 is concerned, how much of that vehicle's speed would a
9 pedestrian be assuming in the context of a pedestrian
10 collision with forward projection?

11 A Forward rejection(ph) will have almost 100 percent
12 speed, post impact, and more -- like I said in this
13 case, it's more of the fact that he didn't get 100
14 percent. Like his center of mass didn't strike the
15 vehicle, so he would not have gotten thrown 100 percent
16 out of the vehicle speed post impact. He would -- his
17 right side would have sustained the vehicle's speed and
18 that would have caused him to spin out. So as opposed
19 to a traditional forward projection, if he was right
20 there in the middle of the vehicle, he would have
21 gotten projected forward, and he would have sustained
22 -- his full body would have sustained the vehicle
23 speed.

24 Q Is that abnormal as far as the sort of forward
25 projection type or pedestrian collision? And what I'm

1 going to ask is specifically to not having any contact
2 with sort of the bottom of the vehicle or being run or
3 something like that, can you -- can you expound upon
4 that a little?

5 A Yeah, due to this sideswipe matter, the projection
6 lock to left is wouldn't show that he would have been
7 -- the car would have ran over him or traveled over him
8 like traditional --

9 MR. JACKSON: I'm sorry, Your Honor.

10 A The car would --

11 THE COURT: I'm going to ask you to slow down --

12 THE WITNESS: Sorry.

13 THE COURT: -- just a little bit trooper?

14 THE WITNESS: Sorry.

15 A Yes, so due to the situation in this scene where
16 he got projected to the left and by(ph) rotated, it
17 would have rotated away from the vehicle and his body
18 would not have traveled under the vehicle as you do in
19 a lot of traditional forward projection crashes, the
20 vehicle would get dragged(ph) before ahead of the
21 vehicle, and that vehicle could possibly travel over
22 that pedestrian.

23 Q So that is not what you found in this particular
24 pedestrian collision, correct?

25 A Correct.

1 Q I know you've mentioned it a couple of times, but
2 I -- if I could ask you to just expound a little bit.
3 When you're talking about center of mass and how that
4 relates between sort of a pedestrian and a vehicle in a
5 pedestrian-type collision.

6 A So pedestrians almost every object has a center of
7 mass. Pedestrians are the same. So if a pedestrian's
8 center of mass is essentially opposite(ph) half the
9 body and you would also put down it's around the chest
10 area, just below the chest area would be a center of
11 mass for a pedestrian. And they all range based --
12 based on height and body shape.

13 Q And so where on someone's body, typically, would a
14 center of mass be located?

15 A Usually just around the chest area or just below
16 the chest area.

17 Q Now, if I can turn your attention, Trooper Paul,
18 back to February 1st of 2022 when you were at the
19 Canton Police Department. You mentioned this -- or you
20 testified earlier at some point that you went outside
21 to an asphalt sort of roadway surface and conducted
22 some forward acceleration and rear acceleration braking
23 test, correct?

24 A Correct.

25 Q Now in addition to that, what, if any, other

1 testing did you do with respect to that vehicle on that
2 particular date in that location?

3 A We did. We checked the cameras and the backup --
4 we did back up visibility analysis with the cameras and
5 the vehicle.

6 Q And again, if you could just in general terms --
7 or, first, just describe for the jury, when you say
8 visibility analysis, typically speaking, what are you
9 doing in a visibility analysis?

10 A In the visibility analysis, we are trying to see
11 what an operator would see in a vehicle. Looking for --
12 invest(ph) in this particular case, we're trying to see
13 if the operator of the vehicle would be able to see a
14 pedestrian behind the vehicle. And also in this where
15 we have backup cameras, we're trying to look at the
16 cameras and see what would the cameras pick up as we go
17 into reverse.

18 Q And in fairness to the defendant at this
19 particular time when visibility analysis was conducted,
20 it was during the daytime; is that correct?

21 A That is correct.

22 Q Your understanding of the crash is that it
23 occurred at nighttime, correct?

24 A Correct.

25 Q Now, as far as a visibility analysis, typically,

1 would you be looking to recreate as close as you can to
2 the conditions at the time that the collision occurred?

3 A In most typical cases, yes.

4 Q And why were you not able -- were you able to do
5 that in this case?

6 A We were not.

7 Q And why not?

8 A Due to his -- most like I said -- what I said it
9 was mostly done when we're trying to see what a
10 pedestrian would -- an operator would see pedestrian.
11 It's mostly done because it's an accident, but not at
12 times when it's, like, an intentional act, we don't --
13 we don't -- visibility is not an issue in this
14 situation. We were just more -- we wanted to make sure
15 that the cameras worked and the backup sensors all
16 worked in the vehicle.

17 Q Now as far as this particular visibility analysis
18 that was conducted in this case, how, if at all, was
19 that memorialized?

20 A It was recorded when the crime scene's trooper
21 recorded it.

22 Q My apologies. Before I get to that, sir.

23 A Okay.

24 Q If I can turn your attention just back to the
25 Techstream just for a moment.

1 MR. LALLY: And, Your Honor, may I approach?

2 THE COURT: Yes.

3 Q Sir, I'm showing you a series of seven
4 photographs. I'd ask you to look those. First, I'm just
5 going to ask you generally if you recognize those?

6 A Yes.

7 Q And what do you recognize those to be?

8 A It's the inside of the vehicle. It appears to be
9 taken out the -- it's showing it they're taking out the
10 infotainment system.

11 THE COURT REPORTER: The what system?

12 THE WITNESS: Infotainment system.

13 Q And the last photograph there, what, if anything,
14 does that depict, sir?

15 A That is the module for the infotainment system.

16 Q And what, if any, involvement did you have in
17 respect to this investigation in regard to the
18 infotainment system?

19 A I didn't have anything. That was Trooper Nick
20 Guarino's did the infotainment system in this vehicle.

21 Q And you indicated earlier in your testimony that
22 you had training as it relates to Berla, correct?

23 A Correct.

24 Q And what, if any, relationship does Berla have
25 with respect to the infotainment system?

1 A They have tools to forensically diagnose --
2 diagnose the infotainment systems.

3 Q And if you know, are you familiar with whether or
4 not that was able to be accomplished in this particular
5 case?

6 A It was not.

7 Q And do you know why not?

8 A Because they had to go to -- I think Berla didn't
9 have the equipment so they went to a --

10 MR. JACKSON: Objection.

11 THE COURT: Sustained.

12 MR. LALLY: Your Honor, may I approach?

13 THE COURT: Yes.

14 Q Now as far as those photographs, are they an
15 accurate portrayal of what you observed in the vehicle
16 during the time that you were conducting your testing?

17 A Yes.

18 MR. LALLY: Your Honor, the Commonwealth would
19 seek to introduce them as the next seven exhibits.

20 THE COURT: Any objection, Mr. Jackson?

21 MR. JACKSON: I'm sorry, I was writing a note.
22 Were those five photographs?

23 MR. LALLY: Seven.

24 THE COURT: Seven.

25 MR. JACKSON: Sorry. No -- no objection.

1 (Whereupon Exhibit No. 597, Photograph, was marked as
2 an exhibit.)

3 (Whereupon Exhibit No. 598, Photograph, was marked as
4 an exhibit.)

5 (Whereupon Exhibit No. 599, Photograph, was marked as
6 an exhibit.)

7 (Whereupon Exhibit No. 600, Photograph, was marked as
8 an exhibit.)

9 (Whereupon Exhibit No. 601, Photograph, was marked as
10 an exhibit.)

11 (Whereupon Exhibit No. 602, Photograph, was marked as
12 an exhibit.)

13 (Whereupon Exhibit No. 603, Photograph, was marked as
14 an exhibit.)

15 MR. LALLY: And, Your Honor, with the Court's
16 permission if I could just --

17 THE COURT: Yes.

18 MR. LALLY: Now, Ms. Gilman, if I can have the
19 photograph labeled BEP2.

20 Q And, Trooper Paul, do you recognize what's up on
21 the screen has now been marked as Exhibit 597?

22 A Yes.

23 Q And what part of the vehicle are we looking at in
24 this photograph?

25 A That's the steering wheel.

1 MR. LALLY: And, Ms. Gilman, if I could have BEP3.

2 Q And, Trooper Paul, do you recognize what's now up
3 on the screen and is marked as Exhibit 598?

4 A Yes, I do.

5 Q And if you could, using the laser pointer, direct
6 the jurors' attention to what, if anything, of
7 significance you observe in this part of the
8 photograph?

9 A That is the infotainment system.

10 Q And as far as the infotainment system, when you
11 are operating that vehicle, what, if anything, was
12 displayed on that screen within the infotainment
13 system?

14 A If you were in drive, it just said, you know, the
15 radio and navigation stuff. But if you're in reverse,
16 that's where the backup cameras and sensors would be.

17 MR. LALLY: And, Ms. Gilman, if I could have BOP45
18 -- BEP4. I'm sorry.

19 Q And, Trooper Paul, do you recognize what's up on
20 the screen as Exhibit 599?

21 A Yes, I do.

22 Q And what, if anything, are we looking at in this
23 is exhibit?

24 A That's the push to start the ignition.

25 Q So that's how this vehicle is started and stopped

1 essentially is the push button starter; is that
2 correct?

3 A Correct.

4 MR. LALLY: Ms. Gilman, if I could have BEP22.

5 Q And, Trooper Paul, do you recognize what's up on
6 the screen as now been marked what's Exhibit 601.

7 A Yes.

8 Q And if you could, using the laser pointer, direct
9 the jury's attention to what, if anything, you observed
10 of significance to this.

11 A Yes, that's the infotainment system. It's on. It
12 shows the start light here. It looks like it sets the
13 navigation.

14 Q Thank you.

15 MR. LALLY: Ms. Gilman, you can take that down.

16 Q Now, with -- if I could take you back just for a
17 second to the VCH data and the kinematics of what you
18 were testifying about just a moment ago.

19 You had mentioned that with respect to the injury
20 to the back of Mr. O'Keefe's head that is consistent or
21 could have been caused by striking his head on part of
22 the pavement or the curbing; is that correct?

23 A Correct.

24 Q Now as far as your training and experience in
25 pedestrian collisions that you've responded to in

1 investigating on prior occasions, as far as weather, as
2 far as the coldness of the ground being frozen, what,
3 if any, impact did that have as far as in relation to
4 the injury to the back of Mr. O'Keefe's head?

5 MR. LALLY: Objection.

6 THE COURT: Sustained.

7 Q Now as far as the visibility analysis that you
8 were conducting on February 1, you mentioned that that
9 was memorialized with photographs as well as video; is
10 that correct?

11 A Correct.

12 Q And this video that was taken, sir, was that in
13 the interior of the vehicle, exterior of the vehicle or
14 both?

15 A I believe it might have just the interior.

16 MR. LALLY: May I approach, Your Honor?

17 THE COURT: Yes.

18 Q Sir, I'm showing you two disks. Do you recognize
19 those?

20 A Yes.

21 Q And those are the recordings of the visibility or
22 the braking and acceleration tests from February 1,
23 both interior of the vehicle/exterior of the vehicle;
24 is that correct?

25 A Yes.

1 MR. LALLY: May I approach again, Your Honor?

2 THE COURT: Yes.

3 MR. LALLY: Commonwealth would seek to introduce
4 as the next two exhibits.

5 MR. JACKSON: No objection.

6 (Whereupon Exhibit No. 604, Disk, was marked as an
7 exhibit.)

8 (Whereupon Exhibit No. 605, Disk, was marked as an
9 exhibit.)

10 Q Before we get to those videos, Trooper --

11 MR. LALLY: May I approach again, Your Honor?

12 THE COURT: Yes.

13 Q I'm showing you another series of what I believe
14 to be eight photographs. I'd ask you to just look at
15 those and look up when you're finished.

16 A (Witness complies.)

17 Q And do you recognize what's depicted in those
18 photographs, Trooper?

19 A Yes, I do.

20 Q And what do you recognize those to be?

21 A Those are photos from the backup -- sensor backup
22 cameras and sensor tests.

23 MR. LALLY: May I approach again, Your Honor?

24 THE COURT: Yes.

25 MR. LALLY: Commonwealth would seek to introduce

1 as the next exhibits.

2 THE COURT: Okay.

3 MR. JACKSON: No objection.

4 (Whereupon Exhibit No. 606, Photograph, was marked as
5 an exhibit.)

6 (Whereupon Exhibit No. 607, Photograph, was marked as
7 an exhibit.)

8 (Whereupon Exhibit No. 608, Photograph, was marked as
9 an exhibit.)

10 (Whereupon Exhibit No. 609, Photograph, was marked as
11 an exhibit.)

12 (Whereupon Exhibit No. 610, Photograph, was marked as
13 an exhibit.)

14 (Whereupon Exhibit No. 611, Photograph, was marked as
15 an exhibit.)

16 (Whereupon Exhibit No. 612, Photograph, was marked as
17 an exhibit.)

18 (Whereupon Exhibit No. 613, Photograph, was marked as
19 an exhibit.)

20 MR. LALLY: And, Ms. Gilman, if I could from this
21 packet photograph 2612.

22 Q Trooper, if you could, please describe to the jury
23 what we're looking at in this photograph that's now
24 been marked as Exhibit 606.

25 A Yes, this is the view from the operator, as they

1 would turn around and look to the back of the vehicle.

2 MR. LALLY: And, Ms. Gilman, if I could have
3 photograph 2616.

4 Q And, Trooper Paul, do you recognize what's up on
5 the screen that has now been marked as Exhibit 610?

6 A Yes.

7 Q And can you please describe for the jury what, if
8 anything, we're looking at here?

9 A Yes, that's the view inside the vehicle showing
10 the infotainment system, and it had backup cameras on
11 it.

12 Q Now as far as the backup cameras on this
13 particular vehicle, what kind of view was -- was able
14 to be portrayed or what did you observe on the street
15 when you placed the vehicle in reverse?

16 A Yeah, so this has a -- there's straight back up
17 camera, and also has a 360 overhead view of the
18 vehicle.

19 Q And as far as the cameras within this vehicle are
20 concerned, are we talking about one single camera or
21 how many cameras are encapsulating this 360 degree
22 camera angle view?

23 A It's the front and the sides and the rear cameras.

24 Q Now, if you put, using the laser pointer, just
25 draw the jury's attention, direct the jury's attention

1 to where you're talking about as far as the screen is
2 concerned depicting that camera angle view.

3 A Okay. So the one on the left, that's the backup
4 camera, and the one in the middle here would be the 360
5 overhead camera.

6 Q Now, in addition to what's depicted on the screen
7 right now as far as the vehicle on the 360 over, as the
8 vehicle travels, what, if anything, in addition is
9 depicted on that particular portion of the screen as
10 far as the 360 overhead?

11 A It shows a sensor and also that sensor shows up in
12 the area where the object that it gets closer to.

13 Q And the sensor that you're talking about, how is
14 that depicted on the screen?

15 A It's a little red like blip or a little bar that
16 would show up on -- on the camera itself.

17 Q And is that something that appears as you approach
18 an object from either in front or behind or something
19 else?

20 A Correct. As you approach the object, the object
21 -- the bar will blink and will get faster as you get
22 closer to the object.

23 Q Now with respect to the system overall, in
24 addition to the visual cues depicted up on the screen,
25 what, if any, auditory clue -- cues are also part of

1 this system?

2 A It will be beep at you and it will -- as you're
3 closer to the object, it will beep faster as you get
4 closer to it.

5 Q And as far as getting closer to an object the
6 beeping that you're talking about it increases in speed
7 or rapidity; is that correct?

8 A Correct.

9 Q And how does it -- what, if anything, does it do
10 as far as the volume of the beeping that's used?

11 A So I guess it would increase as it would get
12 faster.

13 Q So it gets faster and it gets louder as you get
14 closer --

15 A Yep.

16 Q -- an object, correct?

17 A Yep.

18 Q Now with respect to sort of the middle of the
19 screen here on the dashboard, what, if anything, do you
20 observe there, sort of direct the jurors' attention to
21 what, if any, devices are up there right now.

22 A Yes. So right here this blue device, that's the
23 Vbox sport that I attached to the windshield.

24 Q That's something that you attached to the vehicle.
25 It's not necessarily something that was in the vehicle

1 when you began to operate and run?

2 A Yes.

3 MR. LALLY: And, Ms. Gilman, if I could have
4 photograph 2618.

5 Q Trooper Paul, if you could describe to the jury or
6 using the laser points if you could draw the jury's
7 attention to what, if anything, of significance you
8 observed on this portion or closer up image of the
9 screen and the center console?

10 A Yeah. So this -- this is one on the left here is
11 the backup camera and the one in the middle is the 360
12 overhead camera with bars and the lines showing the
13 path of the vehicle.

14 Q Thank you.

15 MR. LALLY: Ms. Gilman, you can take this down. If
16 I may have a moment, Your Honor?

17 THE COURT: Yes.

18 Q Now, Trooper Paul, as far as during this
19 visibility analysis that you conducted, you testified
20 earlier that you were primarily concerned with sort of
21 whether or not the cameras in the -- and the auditory
22 and visual cues worked properly with this vehicle in
23 this system, correct?

24 A Yes.

25 Q During the course of your running these sort of

1 forward and back, reverse, acceleration and braking
2 tests, as well as visibility analysis, what, if
3 anything, did you observe with relation to the
4 functionality of the cameras and the visual and
5 auditory cues?

6 A Everything seemed to be working properly.

7 Q Now, when you were operating the vehicle on
8 February 1, and you shifted the vehicle into reverse,
9 what -- what would then sort of occur with the screen
10 in the center of that?

11 A It would change from the navigation to the -- to
12 the backup cameras.

13 Q And how long a period of time did that take as far
14 as you've shifted from drive to reverse on a number of
15 different occasions while you were conducting your
16 test, Correct?

17 A Yes.

18 Q And so how long a period of time are we talking
19 about between the time that you shift the vehicle from
20 drive or another gear to reverse for those screens to
21 then display both the rear backup camera and the 360
22 overhead view?

23 A It's fairly instantaneous. It's very quick.

24 Q Now at some point during the course of the
25 visibility analysis, specifically, what, if anything,

1 did you place behind the vehicle during your visibility
2 analysis?

3 A It was, like, a punching bag dummy.

4 Q And where did you replay -- where did you place
5 that in relation to the vehicle?

6 A Along -- it's the right rear.

7 Q And as far as that punching back dummy was
8 concerned, about how far up off the ground was the top
9 of that?

10 A I'm not exactly sure the exact height of it. Maybe
11 my height but taller.

12 Q And with respect -- your height, sir, how tall are
13 you?

14 A Five foot six.

15 Q So it was at least five foot six if not taller; is
16 that correct?

17 A Correct.

18 Q And with respect to that placing it behind the
19 vehicle, after it was placed behind the vehicle, at
20 some point, were you inside of the vehicle?

21 A Yes.

22 Q And when you were inside of the vehicle and that
23 was outside of the vehicle, what, if any, visual
24 observations were you able to make with respect to its
25 placement and it's in the right rear passenger side of

1 the vehicle; is that correct?

2 A Correct.

3 Q But what, if any, observations were you able to
4 make with as far -- with respect to that item or
5 exemplar that was placed out there?

6 A It would have been invisible to the cameras.

7 Q Now, with respect to the visibility -- visibility
8 analysis that was conducted with respect to that ---
9 well, let me ask you this first. When I say exemplar,
10 so exemplar pedestrian, can you explain sort of what
11 that term means and as to how it relates to a
12 visibility analysis.

13 A So an exemplar pedestrian is just like you said,
14 if you used a punch bag dummy, it was something that we
15 used in place of a pedestrian to act like a pedestrian.

16 Q Now, when that exemplar pedestrian was placed in
17 the rear passenger side area of the vehicle, what, if
18 any, obstructions did you observe as far as just from a
19 visual perspective, sort of turning your head or
20 looking or cameras or anything else as far as where
21 that -- where that exemplar was placed?

22 A There were no obstructions.

23 Q Now, if that exemplar was placed directly next to
24 the vehicle versus feet away from the vehicle, what, if
25 any, difference did you note as far as visibility was

1 concerned with the --

2 A Yeah, so if it was placed right next to the
3 vehicle, you would -- it would be blocked by the back
4 -- back pillar of the vehicle. If you placed the -- I
5 mean, like, 5 feet away, you would be able to see the
6 dummy and the cameras and also the side mirrors.

7 Q So at a distance of at least 5 feet, it was fully
8 visible from where you sat in the vehicle?

9 A Yes.

10 MR. LALLY: Your Honor, with the Court's
11 permission if we could, I would ask, and I'm sorry I'm
12 not sure what exhibit numbers they are, but the two
13 videos that were just introduced.

14 THE COURT: Okay.

15 MR. LALLY: And, Ms. Gilman, if I could have the
16 exterior video first.

17 THE COURT REPORTER: And just for the record they
18 are 604 and 605, Your Honor.

19 THE COURT: Thank you.

20 MR. LALLY: Ms. Gilman, if you pause that for a
21 moment.

22 Q Now, Trooper Paul, with respect to just for
23 orientation purposes if you could explain to the jury
24 sort of where we are in relation to the Canton Police
25 Department and where it was that you conducted this

1 test?

2 A Yeah, so this -- this is a view from the back of
3 the Canton Police Department. So we are -- so as you
4 look at the Canton Police Department, we would be on
5 the left side of the Canton Police Department.

6 Q And as far as the vehicle in question, if you
7 could using the laser pointer, just direct the jury's
8 attention to where that is and sort of where it's going
9 to be in relation to the camera angle?

10 A The vehicle is right here.

11 MR. LALLY: Ms. Gilman, if you could the rest of
12 it.

13 (Video played.)

14 MR. LALLY: Ms. Gilman, if I could ask you to
15 pause it there for just a moment.

16 Q Trooper Paul, during these testing that you were
17 conducting here with the acceleration, reverse braking,
18 all of those things, the highest speeds that you
19 recorded during the course of that testing was 30 miles
20 an hour; is that correct?

21 A Yes.

22 Q And the highest speed that was contained within
23 that VCH data for the second or the B of those two data
24 sets, what was the highest miles per hour there?

25 A Twenty-four.

1 Q Now, with respect to the braking in this vehicle,
2 what, if anything, was this vehicle equipped with?

3 A It had ABS brakes, interlock brake system.

4 Q And with relation to antilock brake system or ABS,
5 what, if any, relationship does that have with regards
6 to braking and what is then visible on the pavement?

7 A It doesn't leave a -- it don't leave visible tire
8 marks.

9 Q And why is that, sir?

10 A Due to the when the brakes as the brake is about
11 to lock up, it transfers over to another tire so it
12 kind of rotates between tires, so the tires never fully
13 lock up and slide across the pavement.

14 Q Now, in relation to ABS not leaving marks on the
15 pavement, what, if any, relationship did that have as
16 far as the sound difference between ABS brakes and non-
17 ABS brakes?

18 A Yeah, the sound would be different because you
19 would hear -- you would hear a car sliding across the
20 pavement as opposed to just hard braking and engine
21 slowing down.

22 Q As far as sort of sort of screeching of braking
23 and tire coming to a brake, what would you expect to
24 hear with respect to ABS brakes?

25 A There would be no screeching of the tires.

1 MR. LALLY: And, Ms. Gilman, if you could press
2 from here.

3 (Video played.)

4 MR. LALLY: Thank you, Ms. Gilman.

5 Your Honor, with the Court's permission, may I
6 publish the other video, the interior of the vehicle?

7 THE COURT: Yes.

8 (Video played.)

9 MR. LALLY: Ms. Gilman, if you could just pause it
10 briefly.

11 Q Again, Trooper Paul, with reference to what's up
12 on the screen, if you could just using the laser
13 pointer direct the jury's attention to the screen in
14 the center of the dashboard and just as far as what the
15 different parts of the screen are visible here.

16 A So right here is the reverse camera, 360 camera.

17 Q And as far as this particular portion of the
18 interior of the vehicle, are we looking at what was
19 done with regard to acceleration or braking tests, or
20 are we looking at the visibility analysis?

21 A This is the visibility analysis.

22 MR. LALLY: Ms. Gilman, if you could please put
23 up.

24 (Video played.)

25 MR. LALLY: All right. If you pause it there, Ms.

1 Gilman. If I could ask you to just bring it back just
2 a couple of steps.

3 (Video played.)

4 MR. LALLY: If you could pause it there.

5 Q Trooper Paul, as far as the -- this is a closer up
6 image of the screen that was visible on the center of
7 the dash in the vehicle; is that correct?

8 A Yes.

9 Q And if you could using the laser points(ph)-- it
10 may be a little difficult to see, if you could, using
11 the laser pointer direct the jury's attention to what,
12 if anything, you observed on the screen while the
13 vehicle -- the vehicle's in reverse now, correct?

14 A Correct.

15 Q If you could, direct the jury's attention to what,
16 if anything, you observed on the screen as the vehicle
17 is in reverse with the exemplar pedestrian behind it?

18 A Yes. So this screen has now changed to a park
19 assist screen and now it shows a sensor for the back of
20 the vehicle. And also same here the sensor starts
21 popping up and a yellow line for behind the vehicle.

22 Q And you have the dash cam view?

23 A Dash cam view shows the -- that's where our
24 punching bag dummy was and it also shows where the
25 sensor is backed up to on the bottom here.

1 MR. LALLY: And, Ms. Gilman, for the record, this
2 is about 34 seconds in. If you could press play from
3 here.

4 (Video played.)

5 Q Now, Trooper Paul, at some point over the course
6 of your investigation over the course of this case, did
7 you become aware of Ring videos from Mr. O'Keefe's
8 residence at 1 Meadows Avenue?

9 A Yes.

10 Q And specifically, have you had occasion to see a
11 video depicting the defendant backing out of the garage
12 as snow was coming down?

13 A Yes.

14 MR. JACKSON: Objection.

15 THE COURT: I'm going to allow it.

16 A Yes.

17 MR. LALLY: Your Honor, with the Court's
18 permission, if I could publish to the jury with the
19 witness on the stand Exhibit 6, video number 153?

20 MR. JACKSON: Objection. May we approach?

21 THE COURT: Yes.

22 (Sidebar commences.)

23 THE COURT: Okay. I'll hear the objection.

24 MR. JACKSON: This is not in any report. There's
25 been no disclosure about what this witness is going to

1 say about this.

2 THE COURT: Why don't I find out what it is you're
3 going to ask him about.

4 MR. LALLY: What I'm going to ask him is whether or
5 not the impact that he observes in the video is
6 consistent with the damage that he observed to the
7 vehicle.

8 MR. JACKSON: It's completely outside the scope of
9 his expertise. He didn't review the video in any
10 scientific way. He's going to see the video the same
11 way everybody else does. He doesn't have any knowledge
12 about the force impact quotients or what the force is
13 required to crack that taillight. There's nothing --

14 THE COURT: I bet he does. It's a question of
15 whether --

16 MR. JACKSON: I can almost guarantee he doesn't.
17 I'm going to ask him --

18 THE COURT: All right. So -

19 MR. JACKSON: -- in a different way, but why have
20 we not been told about this before? This is yet another
21 circumstance in which a witness clearly has been
22 prepped in a way that we have not been given this
23 disclosure. He's obviously seen this video before Mr.
24 Lally showed it to him. Otherwise, he wouldn't ask the
25 question. It seems like we're being ambushed yet again.

1 THE COURT: All right. So, what I'm going to do is,
2 we'll have a voir dire. It's twenty minutes of 4. How
3 much longer do you have with this witness?

4 MR. LALLY: Very briefly with this, and then just I
5 think one or two more areas at the most, and then I'm
6 going to be done.

7 THE COURT: I don't know how long that is, Mr.
8 Lally. Twenty minutes?

9 MR. LALLY: Yes. Yes.

10 THE COURT: So it looks like you won't get to
11 cross-examination today.

12 MR. JACKSON: I understand. I want to lodge an
13 objection to any voir dire about this. This shouldn't
14 be happening in the middle -- actually at the end of
15 trial.

16 THE COURT: Okay. So I'm going to have the voir
17 dire, and then I'll hear you. All right. So do you
18 want me to just send the jurors out and have the voir
19 dire and bring them back, or send them home for the
20 day?

21 MR. JACKSON: It's up to the Court. I don't know
22 how long the voir dire is going to take. This is the
23 first I've heard of it.

24 THE COURT: I expect it won't take longer than five
25 minutes.

1 MR. LALLY: No.

2 MR. JACKSON: Okay, that's fine.

3 THE COURT: And then you can ask him when he has
4 seen it and all those questions that you want to ask
5 him.

6 MR. JACKSON: Sure.

7 THE COURT: All right. So it's almost -- it's been
8 a very long day just for me because of all the issues
9 this morning. I don't know if it's been for the jurors.

10 MR. JACKSON: Can I ask counsel a quick question?

11 THE COURT: Yeah, go ahead.

12 (Defense counsel confer.)

13 MR. JACKSON: Your Honor, I -- I'm sorry.

14 THE COURT: That's okay.

15 MR. JACKSON: I wouldn't have any objection -- if
16 the Court is inviting the jurors -- the possibility of
17 the jurors going home, I wouldn't have any objection to
18 that. It doesn't look like we are going to get to any
19 substantive cross-examination today.

20 THE COURT: I would not even consider it if I
21 thought you'd have the opportunity to cross-examine and
22 not leave it on the Commonwealth's case on a Friday
23 afternoon, but I think it makes sense.

24 While we are here, I'd like to tell them about
25 scheduling. So I had said Tuesday for the voir dire now

1 of everybody, right? So what does it look like for your
2 -- Monday is the Cellebrite witness?

3 MR. LALLY: Yes.

4 THE COURT: And who else? Do you think that's going
5 to be a whole day?

6 MR. LALLY: No. No, I think if we can finish with
7 this witness, get Mr. Whiffin done, I think we can then
8 at least start if not hopefully finish with Trooper
9 Guarino.

10 THE COURT: And what's Guarino again?

11 MR. LALLY: So Guarino is the defendant's cell
12 phone, the victim's cell phone, largely cell phone
13 extractions, some of the GPS data from the --

14 THE COURT: You're not going to finish him if you
15 even reach him. So what do you want to do? Do you want
16 to do it Tuesday? I wanted to do the voir dire Tuesday
17 because Wednesday is a holiday, and especially I know
18 that the Commonwealth's motion is that I strike Dr.
19 Miller?

20 MR. JACKSON: Russell.

21 MR. YANNETTI: Russell.

22 THE COURT: Russell. That I had ordered discovery
23 be provided within a week and that this is a subject
24 all of the defendant's doing. It's not like the
25 Commonwealth sprung something on the defense. It's the

1 defendants who are bringing up the arm bites. So there
2 will be a legitimate argument on that. It's not
3 something I particularly want to do. But I'll be open-
4 minded and hear the Commonwealth on that. If I don't
5 strike the witness, I did want to give the Commonwealth
6 the opportunity to -- I don't know if you need a
7 rebuttal witness or -- you at least to prepare. You're
8 the only one asking questions. So I want to be able to
9 do that. If we can't do that by doing the voir dire on
10 Tuesday and giving you Wednesday, I'd be inclined to
11 give you a day or a half a day if you need it. So with
12 that, where do we fit in with the schedule the next
13 week?

14 MR. LALLY: With that I would still hope that the
15 Commonwealth should be able to rest on Thursday. If
16 we're doing the voir dire Tuesday -- Tuesday --

17 THE COURT: So do the voir dire on --

18 MR. LALLY: -- holiday Wednesday, I should be able
19 to finish with the rest of the witnesses on Thursday.

20 THE COURT: Okay. Does that make sense?

21 MR. JACKSON: It does.

22 THE COURT: All right. So I'd like to tell the
23 jurors now that we will send them home, we'll be in a
24 full day Monday, Tuesday I will be meeting with you all
25 in an effort to facilitate things rather than have

1 these breaks -- these large breaks that we have.
2 Wednesday is the holiday, Thursday will be a full day,
3 Friday is the half day. I cannot continue that
4 sentencing on Lopes.

5 MR. LALLY: No, no. I wouldn't even ask you to.

6 THE COURT: All right. So that's next week. Given
7 that, it still looks like we'll wrap it all up the
8 following week, right?

9 MR. JACKSON: We do. If I can get -- if we can get
10 to our case in chief on Monday and get a fresh start on
11 Monday, I believe even if Dr. Russell is allowed, we
12 can finish on Wednesday. I truly believe that. I don't
13 know what the Court's intention is in terms of closing
14 arguments, if the Court gives a break for a day or
15 something before we do closings or go right in -

16 THE COURT: I can't give a day. I can't give a day.

17 MR. JACKSON: That's fine. I'm not asking for one.
18 I didn't know if you were going to do it.

19 THE COURT: No.

20 MR. JACKSON: So we will go right into closing I
21 think Thursday, and I would like to have -- I'd like to
22 think that we can have the case to the jurors by
23 Friday.

24 THE COURT: Well, if you do your arguments on
25 Thursday, they get it Thursday. I'm not going to split

1 up arguments and charge.

2 MR. JACKSON: That's fine. I don't know how long --

3 THE COURT: All right. Court Order: Jurors or Juror Issues

4
5 MR. JACKSON: I understand.

6 THE COURT: So we have to get it all done next
7 week.

8 MR. YANNETTI: Can I ask, Judge, there was an off
9 day I think listed on the 26th. Is that now going to be
10 a day that we are going to sit?

11 THE COURT: Court Order: Jurors or Juror Issues

12
13 MR. YANNETTI: Okay. So we can sit that day?

14 Court Order: Jurors or Juror Issues

15
16
17
18
19
20
21 MR. JACKSON: Okay.

22 THE COURT: All right. I'm going to tell them as
23 much of this as I can.

24 MR. JACKSON: Okay.

25 THE COURT: But I am going to tell them that we're

1 on schedule.

2 MR. JACKSON: Okay.

3 MR. LALLY: Thank you, Your Honor.
4 end of sidebar.)

5 THE COURT: All right, jurors. I appreciate your
6 patience. A few things. So I'm going to send you home
7 for the day because the lawyers and I are staying, and,
8 Trooper, I'm going to ask you stay.

9 Sometimes when we take these breaks when I have to
10 talk to the lawyers and then don't schedule you, it's
11 because we have to do things in a case to facilitate
12 getting this case to you now as efficiently as
13 possible.

14 Next week, we will be in session here on Monday.
15 Tuesday's going to be a full day of the lawyers and I
16 with witnesses to make sure that the case is ready for
17 you to wrap up. So Tuesday you will be off, we'll be
18 working. Wednesday is a federal holiday, so Court is
19 not in session on Wednesday. We'll have a full day
20 Thursday and half a day Friday.

21 It's a little different than we looked at, but I
22 am assured that we are still on schedule to getting the
23 case to you folks to begin your deliberations sometime
24 that last week in the month. Okay. So we appreciate
25 everybody's patience. I appreciate the lawyers now

1 really trying to work to get this case to you as soon
2 as possible.

3 So those cautions. Do not discuss this case with
4 anyone. Don't do any independent research or
5 investigation into this case. If you happen to see,
6 hear, read anything about this case, please disregard
7 it, and let us know. We will see you on Monday.
8 Monday will be a full day. Have a great weekend. Thank
9 you very much.

10 (Jury out at 3:50 p.m.)

11 (Court remains in session.)

12 THE COURT: Trooper, we are going to have a voir
13 dire of you. So Mr. Lally is going to ask you some
14 questions. Mr. Jackson is going to ask you some
15 questions. You'll be shown a video. Okay?

16 THE WITNESS: Okay.

17 THE COURT: All right, Mr. Lally.

18 **VOIR DIRE BY MR. LALLY:**

19 Q Now, Trooper Paul, as I was asking you before with
20 respect to, have you had occasion to see a Ring video
21 from Mr. O'Keefe's house at 1 Meadows Avenue depicting
22 the defendant or the defendant's vehicle backing out of
23 a garage while snow was falling?

24 A Yes.

25 Q Now, in addition to that, as you've already

1 testified to, you made observations of the defendant's
2 vehicle in the Canton Police Department garage on
3 February 1, is that correct?

4 A Yes.

5 MR. LALLY: And Your Honor, with the Court's
6 permission, may we play the video at this time?

7 THE COURT: Yes.

8 MR. JACKSON: Your Honor, to save time, I'll
9 stipulate to the video. We all know what --

10 THE COURT: I want to see it for purposes of this
11 voir dire.

12 MR. JACKSON: Understood.

13 THE COURT: In fact, I'd like to see the version
14 that the defendants have with the focusing on the tire.

15 MR. JACKSON: Understood.

16 THE COURT: Both. Go ahead, Ms. Gilman, you show
17 yours and then I'll ask --

18 MR. LALLY: 153.

19 (Video plays.)

20 MR. LALLY: Ms. Gilman, if you could pause there
21 for a moment.

22 (Video paused.)

23 Q Now, Trooper, from your observations from this
24 video, at some point this vehicle either comes close or
25 makes contact with Mr. O'Keefe's vehicle; is that

1 correct?

2 A Yes.

3 Q Now, in addition to your observations of this
4 video and your observations of the defendant's vehicle,
5 at some point have you also seen photographs of Mr.
6 O'Keefe's vehicle?

7 A Yes.

8 Q And is your understanding that those photographs
9 of Mr. O'Keefe's vehicle were taken by State Police
10 Crime Scene Services on February 3; is that correct?

11 A Yes.

12 Q Now, with reference to your observations in this
13 vehicle, what I'm going to ask you is in regard to the
14 significance that you observe -- significance of the
15 impact between the two vehicles, in respect to Mr.
16 O'Keefe's vehicle, what, if anything, did you observe
17 on his vehicle at that time?

18 A The photos or now?

19 Q Right now. I'm sorry.

20 A There was snow on the vehicle.

21 Q And with respect to the contact between the
22 defendant's vehicle and the victim, Mr. O'Keefe's
23 vehicle, what if anything did you observe to occur with
24 relation to the snow based on the significance of the
25 impact between the two?

1 A The snow doesn't move.

2 MR. LALLY: And Ms. Gilman, if you could press
3 play at this time.

4 (Video plays.)

5 THE COURT: Can I see the other video, please?

6 MR. LALLY: Sure, whatever the Court would like.
7 (Video plays.)

8 THE COURT: Thank you. Could you turn the lights
9 on, please?

10 MR. LALLY: Your Honor, if I could, there's just
11 two photographs that I'd like to just for these
12 purposes --

13 THE COURT: Sure.

14 MR. LALLY: Ms. Gilman, if I could have what's now
15 been marked as Exhibit 549?

16 THE COURT: Before you do that, what is the
17 exhibit we just saw through your IT person?

18 MR. JACKSON: Your Honor, it's the same exhibit.
19 It has not been enhanced in any way. It was just
20 magnified for purposes of this, of showing it. In
21 other words, the magnification is not embedded in the
22 video. It's the same video.

23 THE COURT: Okay.

24 MR. JACKSON: We just magnified it.

25 THE COURT: Okay. All right. Go ahead, Mr.

1 Lally.

2 Q And, Trooper, do you recognize what's up on the
3 screen now?

4 A Yes.

5 Q And what are we looking at and which area of the
6 vehicle are we looking at here?

7 A To the rear of John O'Keefe's car.

8 Q The driver's side; is that correct?

9 A Yes.

10 Q And what, if any, relationship does this portion
11 of the vehicle we're looking at here have in relation
12 to the video that we just watched?

13 A It was faced - well --

14 THE COURT: I'm sorry. What was the answer? I
15 didn't hear you.

16 THE WITNESS: I'm sorry.

17 A It was faced kind of the same way. You see the
18 back left rear corner of the vehicle as you do in this
19 picture here.

20 MR. LALLY: And, Ms. Gilman, if I could have
21 what's now been marked as Exhibit 559?

22 Q And, sir, is this the same driver's side rear of
23 Mr. O'Keefe's vehicle?

24 A Yes, it is.

25 Q Now, as far as your observations of these

1 photographs, what if any damage did you observe to Mr.
2 O'Keefe's vehicle in either the last exhibit or this
3 exhibit itself?

4 A There was no damage.

5 Q Now, as far as the impact - let me ask, as far as
6 the damage that you observed to the taillight area of
7 the defendant's vehicle, what if any opinion do you
8 have as to the amount of force necessary in order to
9 cause that damage?

10 MR. JACKSON: Objection.

11 THE COURT: You need a foundation on this.

12 Q So, Trooper, over the course of your -- I'm sorry.

13 How many crashes have you investigated over your
14 time with the State Police CARS Unit?

15 A I've been primary on 196 crashes.

16 Q And I know I had asked you before about pedestrian
17 crashes. Fair to say most of the remainder if not all
18 of the remainder involves vehicles colliding with other
19 vehicles?

20 A Correct.

21 Q Now, with respect to that experience in relation
22 to vehicle crashes, what if any training or knowledge
23 do you have in regard to sort of physical forces of
24 vehicles in a collision sequence and what kind of
25 damage you would anticipate?

1 A So, obviously the higher the speed the more
2 damage; the lower the speed the less damage.

3 Q And what if any -- from the observation that you
4 made in that video and the observations that you made
5 of the defendant's vehicle, what you observed in the
6 video, is that consistent with the damage that you
7 observed to the defendant's vehicle?

8 MR. JACKSON: Objection.

9 THE COURT: So I'm going to allow this for voir
10 dire. I just need to hear this information.

11 MR. JACKSON: Understood, Your Honor. Thank you.

12 A It is not consistent with the taillight in this
13 collision.

14 Q And why not?

15 A One thing, the collision - the taillight is - I
16 want to say 42 to 50 inches off the ground. So that
17 vehicle would have had to have damage 42 to 50 inches
18 off the ground, because they would have had to contact
19 each other in the same distance from the ground, and
20 there's no damage to that vehicle. So if a taillight
21 breaks, it should leave some sort of scratching, maybe
22 a dent, something on - some sort of damage to that
23 vehicle should have occurred.

24 Q And with respect to - I think you just answered
25 it. So as far as Mr. O'Keefe's vehicle, what kind of

1 damage would you expect from an impact significant
2 enough to break the plastic on the taillight of the
3 defendant's vehicle?

4 A It would be a higher speed --

5 MR. JACKSON: Objection.

6 THE COURT: For purposes of the voir dire, I need
7 to hear all of this, Mr. Jackson. Go ahead.

8 A A higher speed than what we probably saw in there.
9 If it's not, maybe it would crack a taillight or
10 something like that, but it wouldn't -- I mean, the
11 damage is different. And also, you know, there -- you
12 have a bumper that's also in the way, too.

13 Q And to that point, Trooper, when it comes to a
14 bumper, from a functional standpoint, what is a bumper,
15 and what does it do with respect to a vehicle in a
16 collision sequence?

17 A The bumper is, you know, basically meant as
18 another cushion to absorb the impact to another
19 vehicle, from one vehicle to another vehicle. It kind
20 of sticks out to kind of also preserve whatever
21 taillights and everything else on top of it.

22 Q And so in order -- from your experience as far as
23 responding and investigating collisions, specifically
24 collisions between motor vehicles, the speed that you
25 observed the defendant's vehicle traveling in that

1 video, what if any relationship does that have
2 specifically as -- also as to the bumper as to the
3 damage that you observed to the defendant's vehicle?

4 A So, if you look at the defendant's vehicle, there
5 is a scratch mark that is along the left side of - it
6 starts from her bumper around the rear. That could be
7 consistently with his - hitting his bumper. They would
8 be around the same height level. They also has - he
9 has a, like, little ridge there on his bumper, so that
10 bumper could have been hit, that little ridge, and also
11 the bumper in itself in here is a different material.
12 Hers is a little lighter, like a glossy colored paint.
13 His is more a duller flat finish. So it might have
14 some - why it would show up on her bumper more than it
15 would show up on his bumper.

16 Q And finally, sir, in your opinion, the damage to
17 the defendant's taillight, is that something that could
18 have occurred or could have been caused by the crash or
19 the contact of the vehicles that you observed in that
20 video?

21 MR. JACKSON: Objection.

22 THE COURT: So again, this is voir dire, Mr.
23 Jackson. I'm going to hear it.

24 A No.

25 Q And again, sir, why not?

1 A For one thing, the bumpers, you'd have to go push
2 through the bumpers in order to hit the taillight
3 against the other vehicle, and there's no damage to
4 that -- that significant damage to a bumper in order to
5 push that into the car.

6 Q And again, there was no snow on the vehicle, by
7 that, I mean Mr. O'Keefe's vehicle, that even came off
8 of the vehicle that you observed during the course of
9 that contact between the two vehicles?

10 A That's correct.

11 MR. LALLY: I have nothing further, Your Honor.

12 THE COURT: All right. Mr. Jackson?

13 **VOIR DIRE BY MR. JACKSON:**

14 Q Did you ever put the two cars together?

15 A I did not.

16 Q No, you didn't, did you? You didn't - you never
17 tested whether or not the SUV would match up with the
18 Traverse, did you?

19 A What do we mean?

20 Q You just said, oh, look, one of them has matte
21 finish, one of them has glossy finish, so it couldn't
22 have happened, right?

23 A No, I didn't -- I'm confused by the question. I'm
24 talking about the taillight --

25 Q Okay, let me try it again.

1 A We're talking about the taillight.

2 Q Yeah --

3 A I thought you were talking about the bumper.

4 Q Yeah, we were talking about the taillight --

5 THE COURT: So one person at a time. You're both
6 talking at once.

7 THE WITNESS: I'm sorry.

8 Q You started talking about the bumpers.

9 A Yes.

10 Q You said, "Well, one has a matte finish, and one
11 has a glossy finish," right?

12 A Yes.

13 Q And you said, "Well, you'd expect one of them to
14 like slide off of each other and they could have done
15 this and they could have done that," right?

16 A Not slide off each other.

17 Q You were suggesting that the two cars wouldn't
18 match up, such that the taillight could make contact
19 with any part of the Traverse. That's what you were
20 suggesting?

21 A I'm saying it didn't match up because of there's
22 no damage to the Traverse.

23 Q But you didn't test whether or not the lens, the
24 right rear lens, on the SUV could match up to any part
25 of the Traverse, right, and make contact, physical

1 contact, with it; right?

2 A When I see a picture of the Traverse --

3 Q Yes or no, Trooper. Did you --

4 A When I --

5 THE COURT: This is a voir dire. I need the
6 information.

7 A You're asking me a question.

8 Q Yeah, and it was a yes or no question, Trooper.

9 A I don't think so, but --

10 THE COURT: Mr. Jackson, just for - there's no
11 jury here.

12 MR. JACKSON: I realize that.

13 THE COURT: This is for purposes of what I have to
14 rule on. The more information I have, the better off I
15 am in being able to rule on it.

16 MR. JACKSON: All right. Let me take a breath.

17 THE COURT: And this is you trying to keep the
18 evidence out, so you want to give me the information.

19 MR. JACKSON: Understood.

20 Q Did you or did you not ever do a test where you
21 backed the Lexus up against the Traverse?

22 A We did not.

23 Q Did you or did you not ever do a test where you
24 put the two cars together and measured them?

25 A No.

1 Q Did you ever measure the taillight of the SUV, the
2 black SUV, against the - any area on that Traverse?

3 A No.

4 Q Did you ever do any force multiplier tests to
5 determine the forces necessary to crack the SUV's
6 convex taillight?

7 A No.

8 Q Did you ever do any testing to determine whether
9 or not a plastic taillight - under how much pressure a
10 plastic taillight would need to be subjected before it
11 would crack?

12 A No.

13 Q Did you ever do any testing to determine whether
14 or not if a taillight, if a plastic taillight came into
15 contact with a metallic portion of another SUV, whether
16 it would leave any mark?

17 A Have I done any testing? I've seen crashes where
18 headlights have struck other vehicles.

19 Q Okay.

20 A That's kind of where the experience comes from.

21 Q Fair enough. But those - I'm guessing that those
22 crashes are probably different speeds and higher
23 speeds; not this, right?

24 A I've had multiple crashes at different speeds.

25 Q So, have you ever had a crash where you

1 investigated - the Massachusetts State Police have been
2 brought in to investigate a crash where the car was
3 going in reverse at about a half a mile an hour?

4 A Half a mile an hour?

5 Q Whatever that was (indicating).

6 A Are you saying the SUV - the Lexus was going a
7 half a mile per hour?

8 Q Well, you're the reconstructionist. Give me an
9 estimate of how fast you think that SUV was going at
10 the point of contact with the Traverse.

11 A Maybe, like, one or two miles per hour.

12 Q Okay, fair enough. Have you ever been called in
13 to a crash, to investigate a crash, where the cars have
14 collided at one mile an hour?

15 A At one - I've had pedestrian crashes that have
16 been at a very low speed.

17 Q That wasn't my question. That wasn't quite my
18 question. A Okay.

19 Q My question is, have you been called in to a crash
20 involving two vehicles that have made contact at about
21 a mile an hour?

22 A I have seen testing for vehicles at low speeds.
23 So you're asking if I had been called to a crash. I go
24 to fatality crashes. But I have seen testing for
25 vehicles at low-speed impacts.

1 Q Okay. How low a speed?

2 A Like, just the bump.

3 Q So like this (indicating)?

4 A Yes.

5 Q Did you see any damage?

6 A Yes. Well, minimal damage.

7 Q Right. And what circumstance - minimal damage,
8 like, I don't know, like a cracked taillight?

9 A No, like just a little bit of rub, rub off on the
10 paint.

11 Q Or you might see nothing, right?

12 A Yes.

13 Q You've certainly seen circumstances in which two
14 cars come in contact and there's absolutely no -
15 there's no physical damage to either car, nothing
16 observable, right?

17 A Have I gone to crashes --

18 Q Sure.

19 A -- that I've seen no physical damage on a car --

20 Q Or just --

21 THE COURT REPORTER: Please.

22 THE WITNESS: I'm sorry.

23 Q Or just in common-sense just every-day life, where
24 one car backs into another car at the Jiffy Lube, makes
25 contact, drives away, and there's no damage?

1 A Not normally. It's usually something with car-
2 and-car impacts.

3 Q Like, what's the something?

4 A A crack or paint, something chips, scratches.

5 Q Right.

6 A Yeah.

7 Q So if you put a piece of metal in that scenario,
8 if you put a metal, steel, right?

9 A Mm-hmm.

10 Q Against a piece of plastic, which one do you think
11 is going to give way first?

12 A You will still see some damage to both vehicles --

13 Q Which one would give way first?

14 A Between metal? Depends what speeds.

15 Q I'm talking --

16 A And when we were talking - you're just saying
17 plastic and metal. You're giving a pretty general
18 broad plastic and metal --

19 Q Trooper Paul --

20 A -- analysis here.

21 Q Trooper Paul, you admit - you've got to agree with
22 me that there are circumstances in which low-speed,
23 very, very low-speed contact, between two cars, can
24 certainly leave damage on one and not damage on the
25 other, damage on both, or no damage on either one?

1 A Yes. I actually just said that in that situation
2 where the scratch is on the side of her car, had a
3 scratch mark, and his doesn't appear to have anything.

4 Q Right. And you said on questioning by Mr. Lally
5 that certain circumstances like this could lead to a
6 lens material, right, plastic material, cracking?
7 Right?

8 A Say it again? Like, on --

9 Q Just a few minutes ago, Mr. Lally asked you --

10 A I'm trying to answer your question.

11 THE COURT REPORTER: Hold on.

12 THE WITNESS: I'm sorry. I'm sorry. Yes.

13 Q Mr. Lally asked you a question a few minutes ago,
14 and you indicated that something might show up on a
15 bumper - I'm sorry, something might like a taillight
16 might actually crack, correct, on low-speed impact?

17 A A taillight might crack on a low-speed impact?

18 Q Correct.

19 A Yeah, it might crack.

20 Q Okay. Now, Mr. Lally also said you saw this video
21 where the cars come close to or make contact, right?
22 That's how he worded the question? Do you remember
23 that?

24 A Come close, yeah.

25 Q Which one is it? Did it come close, or did it

1 make contact?

2 A I said it might. I don't know what - if that
3 scratch from the side is, is something that's
4 consistent with the height of the bumper. Like I said,
5 I didn't measure them side-by-side, but you can clearly
6 see there's a scratch on the side, and it's something
7 that looks like that would come back. So I thought,
8 look at the bumper, and I see the bumper, and it has
9 that little divot, and I look at the side of her car
10 with that scratch mark that kind of lines a little bit
11 of why - that could be where that was from.

12 Q I thought you said there was no damage on that
13 car, on the Traverse?

14 A There is no damage. And that's why I went to the
15 why there is two different paint materials there, that
16 why one could have showed up on her car because it's
17 the flat - the glossy paint on there, and it could have
18 scratched on it. While you have something that's a
19 little more rougher texture with like a flat, you know,
20 flat color on there that wouldn't leave on there.

21 Q So you just described a circumstance in which two
22 cars come in contact, you don't see any observable
23 damage on one and you do on the other. That's what you
24 just described, right?

25 A Yeah, I suggested that when you asked me a second

1 ago.

2 Q Yeah. With regard to the video, let's get back to
3 the question that I asked, which was, in that video,
4 did the SUV come close to or did it come in contact
5 with the Traverse?

6 A Again, I don't know because I'm saying based off
7 the damage that it's something consistent with that, so
8 most likely it did come in contact with the bumper to
9 bumper, but I don't know definitively because there is
10 no damage to his care, but it's something that could
11 explain why there is a scratch mark alongside the right
12 rear side of his car, or her car.

13 Q Did you see the tire move, sir? Did you see the
14 wheel on the Traverse move in that video?

15 A No, I couldn't see the - the wheel move.

16 Q I beg your pardon? You didn't see -

17 A I didn't see it move. If I did, I didn't observe
18 it moving. If it moved, it moved. I didn't observe it
19 moving.

20 Q When was the first time --

21 A I wasn't looking at the wheel.

22 Q When was the first time you saw that video?

23 A I don't really know. It was - it's been a little
24 while.

25 Q Well, I don't know what "a little while" means.

1 A Like, a year ago, I think.

2 Q Okay. So you saw that video a year ago. Did you
3 put anything about that video in your report, which is
4 wherever it is, right here. I'm looking at your entire
5 CARS report.

6 A Yes.

7 Q Did you put anything in this CARS report about
8 watching that video?

9 A No, because I watched the video like after court
10 was done, and honestly I watched the first time on
11 Court TV, so --

12 Q So who -- on Court TV during this trial or at a
13 prior hearing?

14 A No, when it was on TV at some point.

15 Q When did you and Mr. Lally have a discussion about
16 you testifying about this video?

17 A That was, what, a couple of weeks ago?

18 Q I'm sorry. I couldn't understand you.

19 A A couple weeks ago.

20 Q What's "a couple weeks ago"? Is it ten days ago?

21 A Two days ago -- two weeks ago. I mean two weeks
22 ago. A couple --

23 Q Okay. Where did you two meet?

24 A At the DA's office.

25 Q Was that at your request, or was that at Mr.

1 Lally's request?

2 A It was a pre-conference hearing or pretrial
3 hearing.

4 Q Right, well, those don't just --

5 A Pretrial conference. Sorry.

6 Q You done?

7 A What's that?

8 Q We're talking over each other. I'm trying not to
9 talk over you, Trooper.

10 A I'm trying not either.

11 Q Let's both try harder.

12 A Okay.

13 Q Who set up the meeting?

14 A For my pretrial?

15 Q Yes, Trooper Paul.

16 A Okay. Adam Lally.

17 Q Who was at the meeting?

18 A Sitting right here (indicating), Lieutenant Tully.

19 Q Lieutenant Tully, you, Adam Lally, Laura
20 McLaughlin? I'm guessing Ms. Gilman was not there?

21 A She was not there, correct.

22 Q Did Mr. Lally show you this video at that meeting?

23 A Yes.

24 Q Did he tell you that he intended to ask you some
25 questions about this video at that meeting?

1 A Yes.

2 Q Did he ask you whether or not you could render an
3 opinion as to whether or not the impact that you saw or
4 lack thereof, whatever the case may be, was consistent
5 or inconsistent with damage to the taillight?

6 A Yes.

7 Q Did you tell him that you would give him such
8 opinion if called upon at trial?

9 A Yes.

10 Q Did anybody take any notes?

11 A I don't know.

12 Q Were you talking notes?

13 A Yes.

14 Q Where are those notes, Trooper Paul?

15 A I think I just -- well, notes not on this
16 specifically, but just, you know, make sure I had, you
17 know, my -- everything checks and balances for what I
18 wanted to talk about --

19 THE COURT: Make sure you had what?

20 A My checks and balances. Sorry.

21 Q Checks and balances?

22 A Just to make sure I'm more on the same page of
23 what we understand what's going on at trial.

24 Q You wanted to make sure that you're on the same
25 page with Mr. Lally about what's going on at trial,

1 correct?

2 A Yes.

3 Q All right. Did Mr. Lally take notes?

4 A I have no idea.

5 Q Well, you were watching him. I mean, was he
6 writing something down?

7 A I wasn't paying attention to his note-taking.

8 Q Ms. McLaughlin was there. Was she taking notes?

9 A I don't know.

10 Q You didn't see her either?

11 A I don't know if they were, people were taking
12 notes, writing stuff down, or what they're writing
13 stuff down in relations to our, well, conference.

14 Q Did you give him an opinion -- we've asked whether
15 or not you were asked to give an opinion, and you said,
16 "Yes, yes, yes, I was."

17 A Yeah.

18 Q Did you give an opinion at that meeting about
19 whether or not you believe in your opinion the contact
20 between the SUV and Traverse, and Lexus and the
21 Traverse, could result in the damage to the taillight
22 -- in damage to the taillight?

23 A Yes.

24 Q What did you tell him in the meeting?

25 A What we talked about already on the stand here.

1 Q Okay. So what you related to him was exactly what
2 you've relayed in this court?

3 A Yes.

4 Q All right. And he asked you -- sorry. He told
5 you that he was going to ask, "I'm going to ask you to
6 look at the video," correct?

7 A Yes.

8 Q "You're going to be asked a series of questions
9 about that video," correct?

10 A He asked -- he showed me the video, and he said,
11 "Okay, this is the video. This is where they think the
12 taillight was broken, and these are the pictures of
13 this car that they took," so he asked my opinion on do
14 I think that's where a taillight would be broken.

15 Q And he said -- and he told you need to make sure
16 that you tell the jurors that couldn't have happened in
17 this impact, right?

18 A He didn't tell me to make sure jurors - I mean,
19 that's my opinion on - I don't - it doesn't appear to
20 happen in that video.

21 Q Did he tell you that it would be helpful to the
22 prosecution if you said that it would be - I'm sorry -
23 that it was inconsistent with the taillight break?

24 MR. LALLY: Objection.

25 THE COURT: I'm going to allow it. Did he tell

1 you it would be helpful to the case if you said that?

2 A No.

3 Q But you knew it would be, right?

4 A I'm just stating what I saw and my professional
5 opinion on what it is.

6 Q Got it.

7 A If it looked like it was consistent, I would say
8 it's consistent. If it wasn't consistent, it's not
9 consistent --

10 Q I'm sure that's --

11 A I'm not going to --

12 Q I'm sure that's what you would say.

13 MR. LALLY: Objection, Your Honor.

14 THE COURT: Okay. So comments are not appropriate
15 for the jury. They are also not appropriate for me,
16 Mr. Jackson.

17 MR. JACKSON: Understood. Understood, Your Honor.

18 Q Did you formalize your new opinion - because this
19 is a new opinion, right? You've never been asked this
20 opinion before?

21 A Yes.

22 Q Did you formalize this new opinion in any kind of
23 report or memorialize it in any way?

24 A No.

25 Q Did Mr. Lally ask you to create a report of some

1 sort which you'd then turn over to the defense so that
2 we would know that you had a new opinion that you were
3 going to testify about?

4 A No.

5 Q Did you save those notes that you took about
6 making sure that you were on the same page as Mr.
7 Lally?

8 A That's - I mean, yeah. Saved mine.

9 Q Where are they?

10 A They are in my report.

11 Q They're in your report?

12 A Yeah, as I was writing a report, I just kind of
13 like just, you know, highlighted stuff that I wanted to
14 make sure I've memorized them and they're in my report.

15 Q Okay. I'm talking about notes specifically about
16 this video, seeing this video and rendering a new
17 opinion about this video.

18 A No, I didn't have notes specifically about this
19 video. I didn't write anything down saying, "I must do
20 this on this video."

21 Q Did you write anything down about the new opinion
22 that you had come up with related to this video?

23 A No, I did not.

24 MR. JACKSON: May I have just a moment, Your
25 Honor?

1 THE COURT: Yes.

2 Q And your opinion ultimately that you imparted to
3 Mr. Lally in that meeting was that the car did not move
4 and the snow did not move, correct?

5 A Correct.

6 MR. JACKSON: I think that's all I have.

7 THE COURT: Did you want to follow up at all, Mr.
8 Lally?

9 MR. LALLY: No, thank you, Your Honor.

10 THE COURT: All right. So Trooper, you are all
11 set for today. We will see you Monday morning.

12 THE WITNESS: Thank you.

13 (Witness exits.)

14 THE COURT: So you're moving to exclude this.
15 I'll hear you, Mr. Jackson.

16 MR. JACKSON: Your Honor, it's very clear that
17 this is a blatant discovery violation. The
18 Commonwealth has at least the obligation to provide us
19 with any new opinions that any expert is going to
20 testify to on direct examination. They've known about
21 this witness for not months, for a year, for a couple
22 of years. They've known exactly what this witness has
23 memorialized in his official report. They knew that
24 the only thing that we had was the official report.
25 They met with him two weeks ago.

1 This has become a pattern of conduct by the
2 Commonwealth over and over and over. We're finding
3 these witnesses getting on the stand, finding out that
4 there's been a sort of preemptive strike in some sort
5 of a prep interview where they're coming up with new
6 opinions, new conclusions, new facts.

7 It happened with Jennifer McCabe, this new fact
8 about coming up -- going to Michael Lank's house. It
9 happened with Officer Saraf coming up with a new
10 determination about what was said or not said at the
11 scene that we had never heard before. That was also in
12 a prep session of some sort, or I believe it was. And
13 then this witness, literally -- it's not even like
14 just, was it light out or was it dark out. This is a
15 completely new opinion based on evidence that we
16 presented both in -- or talked about in opening
17 statement and have presented variously throughout this
18 trial, and this officer gets on the stand and now has a
19 new central opinion about whether or not we're right
20 and that taillight lens could be cracked.

21 That's something that should have at least been
22 reduced to writing, and even if it was reduced to
23 writing, it should have been excluded because it's a
24 discovery violation. It's late. We don't have time to
25 prepare for it, and we're caught off guard.

1 I used the word at sidebar, "ambush", and I know
2 that rankles the Court and the Court doesn't like it,
3 but that's exactly what it feels like.

4 THE COURT: Well, that's been used both ways here,
5 right? So it's a word -- let's just take it out of
6 here. Make your point. Okay?

7 MR. JACKSON: I'll see if I can come up with a
8 synonym for it. I feel like I'm taking --

9 THE COURT: I understand your argument, so focus
10 on -- just continue where you were, but no comment
11 whether I like "ambush" or don't like "ambush". It's a
12 word I've heard a lot on both sides.

13 MR. JACKSON: I understand, Your Honor. My point
14 is the evidence that now is being sought should never
15 be presented in front of a jury. We didn't have
16 opportunity to get this in advance. This has at least,
17 very least, been in the Commonwealth's possession for
18 weeks. He took notes about it.

19 He now says, 'Well, I didn't take notes about that
20 specifically.' I don't believe that as far as I can
21 throw him. I think he did take notes about it. He was
22 shown the video, he provided a new opinion, Mr. Lally
23 knew that he was providing a new opinion, and then the
24 first time he discloses this opinion is in front of the
25 sixteen jurors -- fifteen jurors.

1 We would ask for its exclusion, Your Honor, and
2 I'll submit.

3 THE COURT: All right. Mr. Lally?

4 MR. LALLY: Yes, Your Honor. AS far as a pattern,
5 especially coming from counsel, I simply find it
6 laughable.

7 As far as Officer Saraf, I think what counsel is
8 referring to was testimony that was in his grand jury
9 testimony. He was crossed about whether or not it was
10 in his report, but it was in his grand jury testimony.

11 As far as Ms. McCabe is concerned, that was
12 regarding reciprocal discovery that was given to the
13 Commonwealth weeks into trial by the defendant. It was
14 then shown to a witness, which was perfectly
15 permissible. Counsel asked a question of Ms. McCabe on
16 cross, and she was aware of the material based on the
17 late disclosure of reciprocal discovery. So there's no
18 violation there.

19 As it relates to -- and why I say laughable, Your
20 Honor, is that I still --

21 THE COURT: So I don't like hearing you say
22 laughable.

23 MR. LALLY: Understood.

24 THE COURT: Just stick to what the arguments are,
25 okay?

1 MR. LALLY: With respect to this witness --

2 THE COURT: Hold on. Quit the finger-pointing,
3 name-calling, things like that, please.

4 MR. LALLY: Yes, Your Honor.

5 THE COURT: I know it's been a long week. It's
6 been a particularly long day, but just focus on what
7 you want your argument to be.

8 MR. LALLY: And I apologize to the Court for that,
9 Your Honor.

10 With respect to this testimony, it's well within
11 his realm as a crash reconstructionist. This is a
12 witness who has responded to and investigated hundreds
13 of crashes involving damage to vehicles, simply making
14 an observation of contact between two vehicles or
15 purported contact between two vehicles on a video. The
16 force is self-evident, and whether or not that force is
17 sufficient to cause the damage that he observed,
18 personally observed, on the defendant's vehicle is well
19 within his expertise and should be permissible as far
20 as for this witness to be able to testify to.

21 THE COURT: What about the non-disclosure to the
22 defense about showing this video and asking for an
23 opinion? What about that?

24 MR. LALLY: So, Your Honor, what I would say is I
25 did not show this video and ask his opinion. This is a

1 video that actually the trooper mentioned to me that he
2 had seen over the course of while the case was pending,
3 probably over a year ago, that he had seen that video.
4 What I showed him was the photographs of Mr. O'Keefe's
5 vehicle and asked whether or not he observed any damage
6 consistent with the damage to the taillight observing
7 or popping up on Mr. O'Keefe's vehicle.

8 THE COURT: And why wasn't that turned over?

9 MR. LALLY: In hindsight, it should have been,
10 Your Honor.

11 THE COURT: All right. It's late. I'm not ruling
12 here. I want to review anything. I would like - I'm
13 not obviously taking any of the evidence home with me.
14 I would like if it's possible for what your IT person
15 did on the expanding like he did. This second time,
16 maybe I missed it, but I didn't see the tire move this
17 time.

18 MR. JACKSON: It did.

19 THE COURT: So I'd like that. I'd like that
20 video, and I would like - what's the exhibit number
21 here?

22 MR. LALLY: It's Exhibit 6. Do you want just that
23 video, Your Honor?

24 THE COURT: And the pictures of the cars, whatever
25 was shown during this voir dire. I would like those

1 emailed to me so that I can look at them this weekend
2 while I'm deciding, or put them on a flash drive right
3 now.

4 MR. JACKSON: That's what I'm thinking.

5 (Inaudible.)

6 THE COURT: I'm sorry. I can't hear you.

7 MR. AMABILE: We'll do a screen record and get it
8 to the Court by email. We can do that. I just need an
9 hour once we get back to home base.

10 THE COURT: Okay. All right. Ms. Gilman, will
11 you burn what you have for me before you leave?

12 (Inaudible response.)

13 MR. JACKSON: Your Honor, if I could, I just want
14 to close one loop.

15 THE COURT: Okay.

16 MR. JACKSON: When I was referring to Ms. McCabe,
17 I want to make sure that this is clear because this has
18 come up a couple of times. The only thing I was
19 referring to or what I was referring to - it's not the
20 only thing - but what I was referring to with Ms.
21 McCabe is after Ms. McCabe testified, days and days and
22 days after she testified and she was excused as a
23 witness, then we got the report from Lieutenant Tully
24 about the new information that she disclosed on the
25 witness stand.

1 In other words, she was cross-examined about it,
2 et cetera, and then after she testified and was cross-
3 examined and gone, then we got a report that predated
4 her testimony that was in the possession of the
5 Commonwealth or at least in the possession of
6 Lieutenant Tully.

7 That's what I was talking about, and I just wanted
8 to make sure the record was clear. We don't need to go
9 into it any further.

10 THE COURT: Did you want to add anything to that,
11 Mr. Lally?

12 MR. LALLY: No.

13 THE COURT: All right. So I'll see you Monday
14 morning.

15 (Court in recess.)
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C E R T I F I C A T I O N

I, CHRISTINE D. BLANKENSHIP, NOTARY PUBLIC, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT FROM THE RECORD OF THE COURT PROCEEDINGS IN THE ABOVE-ENTITLED MATTER AS TAKEN BY NANCY KING, CVR.

I, CHRISTINE D. BLANKENSHIP, FURTHER CERTIFY THAT I NEITHER AM COUNSEL FOR, RELATED TO, NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN WHICH THIS HEARING WAS TAKEN, AND FURTHER THAT I AM NOT FINANCIALLY NOR OTHERWISE INTERESTED IN THE OUTCOME OF THIS ACTION.

Christine D. Blankenship, December 6, 2024

CHRISTINE D. BLANKENSHIP, NOTARY PUBLIC
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